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PUBLIC ARCHIVES—APPENDIX

DOCUMENTS

RELATING TO

THE CONSTITUTIONAL HISTORY OF CANADA

1819-1828

Selected and edited with notes by

ARTHUR G. DOUGHTY

and

NORAH STORY

OTTAWA
J. O. PATENAUDE
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INTRODUCTION

In 1904 a proposal was made by the Public Archives to edit and print a series of documents relating to the constitutional history of Canada between 1759 and 1867. Three volumes have been published, illustrative of developments to 1818. In the present volume the story is continued to 1828, a period closing with the Report of the Canada Committee.

The documentary material for a study of Canadian constitutional history is necessarily varied, since it must cover both that dealing with the Colonial Office as well as with internal development. It consists in the first place of statutory law, both British and Canadian, and in very close relationships, court decisions, the opinions of law officers and of the legal adviser to the Colonial Office. In a second category may be placed Proclamations and Orders in Council. From these two classes may be drawn the legal framework of the constitutional structure.

Aside from the actual law of the constitution, there exists a body of precedent built up through executive and administrative action. In order to understand this, one must be conversant with the commissions and instructions of the Governors, Lieutenant-Governors and other officials charged with the administration of Colonial affairs, as well as with the correspondence between the Governors, Colonial Secretaries and other departmental officials.

The reports, resolutions, addresses and debates of legislative bodies, while not a part of the constitutional law, are none the less of great importance. They constitute a body of considered and responsible opinion upon which both statutory and administrative law has, in many instances, been based. Of a like nature are the opinions given by individuals whose advice carried weight with the executive or legislative branches of Government. Finally there remains a body of miscellaneous material, comprising petitions representative of the wishes of large sections of the country, private correspondence, and opinions expressed in the public prints. A careful examination of all these sources has been the first step in the preparation of this book.

Passing to a more detailed analysis of this period one finds a marked structural change as a result the British statute, 1 & 2 Geo. IV, cap. 66 (printed at page 36), whereby civil jurisdiction was extended to the western territory. Statutes of this nature require little by way of commentary. Difficulties of a constitutional nature creep in however, when considering the statutes of Upper and Lower Canada. The question of *ultra vires* must be borne in mind, and it will be seen that this problem was raised frequently during these years. One instance of disallowance of legislation on such grounds may be seen in the document dealing with the Parochial Subdivisions Bill (pp. 287-290). In considering this case, it becomes apparent that Colonial legislative power was restricted during this period by the provisions of the Constitutional Act of 1791. Since this document has been printed in an earlier volume, it may be well to recapitulate here those clauses which define the legislative power. By clause 2

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of this Act, an Assembly and Legislative Council were created with power "to make Laws for the Peace, Welfare, and good Government thereof, such Laws not being repugnant to this Act." Clause 30 empowered the Governor, at his discretion, to assent to, disallow, or reserve Bills passed by the Assembly. Clause 31 provided that copies of all Colonial statutes should be sent to the Secretary of State when they might still be disallowed by the Home Government within two years. And finally, by clause 42, it was laid down that acts which in any way affected the Clergy Reserves, Religion, religious dues, the discipline of the Church of England, or the Royal Prerogative in the granting of lands, must be laid before both Houses of Parliament before the Royal Assent could be given. It is then in the light of such statutory provisions that one must read the documents relating to the reservation and disallowance of statutes.

The relation of court decisions and legal opinions to legislation is another subject illustrated here. The opinions of the Law Officers of the Crown upon such questions have been freely drawn upon. To cite an example one may take the Upper Canada Naturalization Act. The opinion of the Law Officers on Bidwell's case (pp. 234-235) is found to be based upon a decision given in the Court of King's Bench, *Thomas vs. Acklam*. It was there decided that "a person in the situation of Mr. Bidwell is not a natural born Subject of His Majesty but an alien and that the Son of such a person born in the United States after the Treaty of 1783 is also an alien." Following upon this is the dispatch from Bathurst to Maitland, 22 July, 1825, declaring that in the light of such a decision, the rights of subjects should be conferred upon aliens by legislative provision.

During the period under consideration no change was made in the commission and instructions to the Governors. One interesting document of this type, however, is the commission of W. B. Felton as Commissioner of Crown Lands (printed at page 346). Dispatches and inter-departmental communications on constitutional matters are numerous. Among other things these reveal the part played by the Treasury and Customs in the administration of the colony. The documents dealing with the financial struggle in Lower Canada bring out the dependence upon the Treasury and in this connection it is well to revert to the Instructions of 1791, printed in an earlier volume, in which it is laid down:—

"That in all Laws or Ordinances for levying Money or imposing Fines, Forfeitures or Penalties, express mention be made that the same is granted or reserved to Us, Our Heirs and Successors for the Public uses of the said Province, and the Support of the Government thereof, as by the said Law shall be directed, and that a Clause be inserted declaring that the due Application of such Money pursuant to the Directions of such Law shall be accounted for unto Us through our commissioners of Our Treasury for the time being in such manner and form as we shall direct." *(Doughty and McArthur, p. 17.)*

Coming to the documents illustrative of legislative opinion one finds the Report of the Canada Committee of 1828. This has always elicited great interest and will be found, printed in full at page 466. Addresses and resolutions of the Assemblies upon such questions as clergy reserves, aliens, and supply, are numerous and will be found to show the progressive growth of public opinion upon these vital questions.

The Minutes of the Executive Council may be regarded as serving a double purpose. On the one hand they show the workings of the executive machinery and on the other, they contain the considered opinion of the most conservative section of the population.

Among the miscellaneous material one finds an early example of constitutional discussion through the medium of the press, which took place as a result of the death of the King, in 1820. This is included as illustrative of the popular interest in constitutional questions.

In editing the petitions for and against the proposed Act of Union of 1822, it was found that they may be divided into classes. Many of them repeat the arguments employed in others. For this reason a selection was made with the purpose of printing one example of every type of argument employed either for or against the measure.

Such are the principles upon which the documents have been selected and edited. The arrangement, as far as is convenient, is the same as in preceding volumes. The system of reference to documents by the series and volume numbers of the Public Archives has also been retained. It has not been found practicable to include documents dealing with developments in the Maritime Provinces. These will be dealt with separately at a later date.

A. G. D.
N. S.

Ottawa,
February 11, 1935.

GORE TO BATHURST.[1]

Upper Canada, York.
7th April 1817

Dup.

My Lord,

I lose no time to apprize your Lordship that I have found my self constrained to prorogue the Provincial Legislature in the midst of its Session, and before it has provided all the means intended to meet its appropriations. [Encl. 1]

Such a measure requires that Your Lordship should be made acquainted with the circumstances which led to it, and some details which I have not hitherto thought necessary to trouble your Lordship with.

Your Lordship's Despatch of the 10th of January 1815 addressed to Sir Gordon Drummond, requiring this Government to use its best endeavours to prevent the Subjects of the United states from Settling in this Colony, was laid by me, before the Executive Council, and by its advice I issued an Order to the Magistrates prohibiting them from Administering the Oath of Allegiance to persons coming from the United States of America without a licence for that purpose from the Lieutenant Governor.

This advice, I understand proceeded from a peculiar feature in the Provincial Statutes, which enables the Magistrates, to order out of the Province any suspected person who had not taken the oath of allegiance, and seems conformable to a sound construction of the 30th of His Majesty;[2] although I have reason to suppose, that Act was not in contemplation of the Council when it recommended a measure so consonant to its Spirit.

This interruption of the flowing migration from the United States of America, was particularly offensive, to certain Land Speculators, who had become possessed of vast Tracts of Land under the injudicious Sales made by the late President Russell.

These Speculators depended Chiefly on a Population from the United States, and the principal, Mr William Dickson, who I regret to say, is himself a Member of the Legislative Council, and a Commissioner to administer the Oath of Allegiance, was the first, and only one, reported to me, who disobeyed my Instruction, and vindicated the rights of every Subject of the United States, to settle and establish himself in this Province.

Finding his Example not followed, and that settlers of every description, would not venture to purchase, or improve Lands, under the doubt of future Capacity to hold: he had recourse to an Instrument in the House of Assembly, to force upon the Executive Government, such a construction of the 30t of His Majesty, as would suit his purpose.

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[1] *Q. 322, pp. 129-141.* This despatch, though prior to 1818, has been given in order to make other communications on this subject, more clear.

[2] 30 Geo. III, cap. XXVII, (1790). "An Act for encouraging new Settlers in His Majesty's Colonies and Plantations in *America*." This was the act under which the "late loyalists" took up land.

In pursuance of this concert, Mr Nichol, a Gentleman of Prominent talents, and hitherto of great utility in the House of Assembly, took advantage of the Call, I had been compelled to make on them, for means to defray the expenses of the Administration of Justice and the support of the Civil Government, on failure of the usual resort to the Extraordinaries of the Army, and induced the Lower House to form itself into a Committee, (as it was termed on the state of the Province) in which the resources of the Colony were to be investigated and means devised to meet the unusual supply demanded of them.

In this Committee propositions of an extraordinary character were introduced, in Language not measured, tending to censure this Government for restraining Emigration from the United States, which they knew to have been directed by His Majesty's Government, to reproach the lavish provision, of one seventh of the Land for a protestant Clergy.—to call for the sale of the Crown Reserves, and an Enquiry into the Revenue from the Post Office, which was supposed to have been enhanced, by encreased rates of postage, since the 17th of His Majesty, when the Reserves [sic] to be raised in the Province were declared to be applicable to its uses. [Encl. 2].

This wide field, ranged by the mover, Mr Nichol, of this Committee, must naturally have led many of the Ignorant and seduced Members of the Assembly, to expressions and perhaps Resolutions, imprudent and inadmissible; but that consideration could not have led with certainty to the measure I have adopted, doubtful how far Mr Nichol might be supported when the flagrancy of his attack upon the Government should be unmasked, the first part was made at the true and I apprehend, only object of the Mover's Apostacy; for until this Session, he had led the Loyal and Rational part of the Assembly, but indignant at some disappointment of a Medal, which he asserts, was promised by the King's Minister for Services in the War as Quarter Master General of Militia, and resenting my refusal to certify Services of which I had no knowledge, and my declining any Special interference in his favor, on the Subject of his Claim for remuneration of losses sustained by him during the War, as reported by the Commissioners

These considerations I presume, combined with interested Motives, arising from the Indian Sales induced him to propose in the form of Resolutions, first that the British Statutes of the 13th of George the 2nd[1] and 30th of His Present Majesty, existed, and by their provisions, made it lawful for Subjects of the United States, of America, to settle, and hold Lands in this Province– secondly, that the prohibition to administer the Oath of Allegiance, to such persons, was illegal, and that the Governor should be addressed to rescind the order to that Effect.

Finding that part of these Resolutions, had been carried by a Majority of 13 to 7, on Saturday evening, and that the most obnoxious, which would unavoidably involve the Provincial Government, in improper discussion of the Commands of His Majesty's Government, would pass early on Monday, I decided rather to prorogue the Legislature in the then state of the Session, than to wait until such dangerous Resolutions, reported and adopted, should be promulgated to the Public, through the medium of the press.

[1] 13 Geo. II, cap. VII, (1740). "An Act for naturalizing such foreign Protestants and others therein mentioned, as are settled or shall settle, in any of His Majesty's Colonies in America."

I therefore went down as the Speaker took the Chair this morning, and prorogued the Assembly to the 17th of May.

I cannot conclude this Despatch, without a most urgent but respectful call on your Lordship's attention to the state of this Colony.

I do not hesitate to advance, as my Opinion, that if the restraining of Emigrants from the United States, from settling in this province, should be abandoned, the next declaration of Hostilities by America, will be received by Acclamation, and the Loyal population of the Colony, will be reduced to defend themselves from the disloyal.

Should His Majesty's Law Servants in England be of Opinion that the execution of the Statutes, of the 13th of George the 2nd and the 30th of His Present Majesty, warrants the construction of the House of Assembly, they cannot be too soon repealed, or modified, to coincide with the Instructions of His Majesty's Government.

I shall have the honor to transmit to Your Lordship the several Acts passed in this Session with a more particular Account of other incidents attending it, which will require the opinion of the Crown Lawyers in England.

I restrain myself at present to the assurance, that if early attention is not paid to compose the spirit arising, by the machinations of Land Speculators, in this province, the King's Government will be exposed, in all future time, to purchase tranquility by the disagreeable measure of stifling sedition by rewards, and thus encouraging the growth of the evil.

I have the honour to be,
My Lord,
With great respect,
Your Lordship's
most Obedient
humble Servant

FRANCIS GORE,
Lt Governor

1. Resolved that an Act was passed, in the 13th year of George the 2nd for naturalizing such foreign protestants and others therein mentioned as were then or should thereafter be settled in any of
Adopted. His Majesty's Colonies in North America.

2. Resolved, that an Act was passed in the 30th year of His Majesty's Reign, entitled, "An Act for encouraging New Settlers
Adopted. in His Majesty's Colonies in America.

3. Resolved that the said Acts were enacted for the express purpose of facilitating and encouraging the Settlements in His Majesty's
Adopted. American Dominions.

4. Resolved, that the said Acts are still in force, and that subjects of the United States may lawfully come into and settle in this Province, hold Lands, and be entitled to all the Privileges and

Immunities of natural born Subjects therein, on complying with the several formalities required by the said Acts, and the existing Laws of this Province.

5. Resolved, that during the late War with the United States, from the want of population, the Operations of the King's Armies, were frequently delayed and defeated, the Country itself much injured by the frequent calls upon the people for Militia Services and for Transport, and an enormous expense occasioned to the Mother Country from the insufficiency of Transport and of supplies.

6. Resolved, that the Province contains immense tracts of uncultivated Land of the very best quality, which if occupied by an Industrious population would in a short time furnish ample supplies of Provisions and Lumber for His Majesty's West India Colonies, encrease the carrying Trade of our Mother Country, and add considerably to the General Wealth and Prosperity of the British Empire.

7. Resolved, that at the present moment, from the discouragement given to Settlers from the United States, very many respectable and valuable Settlers have been prevented from Emigrating into this Province.

8. Resolved, that an Humble Address be presented to His Excellency that [sic] Lieut. Governor stating the injury that has been sustained by the Province, and the Check given to its population and prosperity by the preventing Emigrants from the United States from taking the Oath of Allegiance to His Majesty, and praying that he will direct any orders that may have been made prohibiting the Admission of persons from the United States to take the Oath of Allegiance, be rescinded.

9. Resolved that the large Tracts of Crown and Clergy Reserves throughout the Province are insurmountable obstacles to the forming a well connected Settlement, which is– an object of no small importance in a country where the opening and Keeping Roads in repair is attended with great expense and labour.

But in political points of view the measure is still more objectionable from the holding out great inducements to future Wars with the United States by affording the means of partially indemnifying themselves to reward their followers in the Event of conquest.

10. Resolved, that the sale of the Crown Reserves, instead of leasing them (as at present) would relieve the Province from a heavy charge now brought against its Revenue, and would relieve the Mother Country from all charge from the Civil Establishment, introduce into y^{e} Province a respectable population which would add to its wealth and Resources

11. Resolved. That the Reservation of one Seventh of the Lands in the Province for the maintenance of a Protestant Clergy is an appropriation beyond all precedent lavish,– that from the sale of

these, churches might be erected and endowed without any charge to the Mother Country– that to obtain so desirable a measure, a respectful representation to be made to the Imperial Parliament, and recommending that– of the Lands now appropriated a Clergy Reserves [sic] be sold and applied as above stated, and that in future there should be the .... instead of the one seventh part in each Township Reserved.

BATHURST TO SMITH.[1]

Downing Street
30th Novr 1817

SIR,

I have laid before The Prince Regent the dispatch addressed to me by Lt Governor Gore dated 7th April last in which he communicated to me the reasons which had induced him to prorogue the Provincial Legislature and requested instructions with respect to that part of the resolution submitted to the House of Assembly which relates to the right of American Citizens to hold Lands in the Province.

I have to acquaint you in reply that in originally calling the attention of Sir Gordon Drummond to the necessity of excluding as much as possible American Citizens from the possession of Lands in the Province His Royal Highness had no intention of contravening those Acts of the British Parliament 13th George 2d and 30t George 3d to which the resolutions of the Assembly refer: His Royal Highness on the other hand was only desirous that the provisions of those Statutes should be duly enforced considering that while they gave due encouragement to the Settlement of the Province by well affected persons they effectually excluded those with respect to whose Loyalty and fidelity suspicions might naturally be entertained.

The Lieutenant Governor and the Assembly each appear to have misunderstood to a certain extent the provisions of the Acts in question.

Under the 30th George the 3d American Citizens arriving in the Province are entitled to have the oath of Allegiance and the Oath of their intention to reside and Settle Administered to them in the manner prescribed by the Acts nor has the Governor any discretion as to refusing or preventing the Administration of these Oaths.

But on the other hand the Assembly are in error in supposing that the taking of such Oaths can of itself qualify an American Citizen to hold Lands in the Province. The Act of the 13th George 2d cap 7 is still in force and under its provisions a previous continued residence of seven years in the Province is the indispensable condition of being entitled to hold Lands

It was to the enforcement of this Legislative Provision that His Royal Highness deemed it at the close of the War most necessary to call the attention of the Provincial Government nor can His Royal Highness see any ground for now withdrawing a restriction not less essential than formerly to the well being of His Majesty's North American Dominions. I have therefore only to desire that

[1] *G. 58, pp. 242-245.*

you will cause it to be generally known throughout the Province that no Foreigner will be permitted to hold Lands in the Province unless he " shall inhabit or reside for the space of seven years or more in any of His Majesty's Colonies in America and shall not have been absent out of some of the said Colonies for a longer space than two Months at any one time during the said seven years " and shall have complied with the other conditions prescribed in the said Act and that you will take the necessary legal measures for dispossessing those persons not entitled to the privileges of Natural Born Subjects who shall since the War have possessed themselves of Lands under any other circumstances than those admitted by the Law.

I have the Honor to be
Sir,
Your most obedient
Humble Servant

BATHURST

Mr President Smith
&c &c &c
Endorsed 30th Novr 1817
from Earl Bathurst
Oath of Allegiance to
American Citizens
&cra

Opinion of Attorney General.[1]

Copy

Attorney Genls. Office,
York, April 1818.

May it Please Your Honor,

In obedience to the commands of Your Honor, I attended the Honorable The Executive Council, to explain to them more fully the reasons which induced me respectfully to request that the Proclamation I had prepared, in obedience to Earl Bathursts despatch of the 30th November last should receive the especial consideration of Your Honor in Council, that it might obtain your express Sanction, before, I transmitted it to the Secretary of the Province to be published in the ordinary way.– Considering this matter very important I am anxious that I may not be misunderstood, in what I have done or said respecting it, and, to that end, take the liberty of stating to your Honor, in writing, what I endeavoured to explain to the Executive Council when called before them.–

In the proclamation I have drawn I have confined myself as strictly as possible to the letter of my Lord Bathurst's instructions nevertheless it appears to me to involve questions of great delicacy and importance–

It declares that no foreigner will be permitted to hold lands in this Province until he has in all things complied with the provisions of the British Statute 13th. George 2nd. Chap. 7.[2] If the terms of the proclamation, or the instructions of

[1] *Q. 344, pp. 90-97.*

[2] Act of 1740 for naturalizing foreign Protestants who desire to settle in the American colonies. It required seven years' residence in any British colony after which the usual oaths must be taken.

His Majesty's Government extended no further than to say that His Majesty would grant no lands in this Province to any foreigners who had not by the terms of that act entitled themselves to the privileges of Natural Born Subjects, it would have involved no questions of delicacy because the King of course may govern himself by such restrictions as he pleases in granting the Waste Lands of the Crown. But when it is declared that no foreigners who have not qualified themselves according to the Provisions of the 13th. George 2nd Chap. 7—*will be permitted* to *hold* lands in this Province, it must be understood that measures will be taken to dispossess those, who not being so qualified are possessed of land in this Province or may hereafter become so—

Now the Government of this Province are well aware that a great proportion of the real property of this Country is in the occupation of persons, who not being perhaps properly subjects of His Majesty have yet not qualified themselves according to the Act. I mean the many American Citizens who before the late War, and since, have become resident in this Province, and acquired Lands either by Grant from the Crown or by purchase.

It is almost exclusively with those persons that Questions under this Proclamation would be called into discussion, for there has been comparatively very little emigration from any other foreign Country to this.

The Act of 13th George 2nd Chap 7. designates as foreigners persons born out of the leigiance of His Majesty. It clearly contemplates no middle state between those and natural born subjects, who of course stand in no need of the beneficial provisions of the Act.

With respect to American Citizens then, the first question that will arise is in regard to those born before the treaty acknowledging their independance in the year 1783. They certainly are not persons " born out of the Kings allegiance." They are therefore not concerned in the Act of 13th George 2nd Chap 7.– None of its provisions apply to them, and if they cannot hold real Estate in this Colony as being properly natural born Subjects of His Majesty; they cannot in my opinion, at all, for they can never entitle themselves under this Act.

The question then will be whether the Inhabitants of the United States born before the year 1783—and of course within the King's allegiance, were by the acknowledgement stripped of all rights of natural born subjects, so that in contemplation of the law they are in all respects Aliens.—It is an important question, perhaps the most so of any that can affect this Colony (as it is situated with respect to the United States) and I am not aware, that it has in this general sense received any solemn decision. If they are not now subjects, I do not see how they can become so under any Act now in force, for the reasons I have adverted to, before– If they are still to be considered, as subjects, their situation involves this monstrous absurdity (in the Law of England) that without any express provision, in their favour, they may become in 1815 under the sanction and protection of our laws the legal proprietors of our soil, which in 1814 they invaded in open war without incurring the guilt of treason.

Then with respect to those inhabitants of the United States born since the year 1783.– it would become a question whether they may not be entitled, though born out of the King's Allegiance, to the privileges of natural Born subjects under the provisions of the 7th Anne Chap 5 as explained by the 4th Geo. 2nd

Chap: 21 and the 13 Geo. 3. Chap: 21.[1] Though this question seems in a great measure to dépend upon the former, as it is only in the event of the fathers' being a natural born Subject, "at the time of the birth" that the children become naturalized by the above recited acts.

If it is decided that the acknowledgement of the Independence of America divested American Subjects born before that period of all Rights of British subjects, then a new question presents itself in considering how, Among those born in the Colonies now the United States before the year 1783, American Citizens are to be distinguished from British Subjects residing in America.– It cannot be that the Independence of America, absolved from their allegiance and divested of all its consequent rights, persons who never contended for it, and who were in principle and conduct attached to the Royal cause;– that an Englishman, Irishman or Scotchman, merely because he was resident in the States when they became independant has thereby lost his Rights as a Subject of Great Britain, and must be taken to have forfeited his allegiance– Where then shall we draw the line what shall be the test?

I do not see how the War that has lately terminated between Great Britain and the United States can have at all altered or affected the relation of the two Countries, or made them more independent of each other than they were, Nor how an American subject by any law of Nation [sic] can have lost Rights by the war which he had before.

The circumstance of a war subsequent to that which made them independent cannot have changed their lelation [sic] to us, so as to have removed any of the difficulties that have been considered above. If those coming from the United States since the war and obtaining lands here are liable to be dispossessed, so are those who came in before the war, and if it is not the intention of His Majesty's Government from any equitable distinction they may have conceived between the two cases, to disturb the titles of the latter, yet the dispossession of the former will at least imply that they are held at the Mercy of the Crown, and will create a very great sensation in the Province, by giving the alarm to a great proportion of the Land holders in it.

I have thus taken the liberty of stating to Your Honor, very imperfectly, I confess, some of the considerations necessarily connected with this proclamation.– And I desire to impress upon Your Honor, that it is impossible the Government of this Province can proceed far in enforcing it before they will be thrown upon the decision of one or all of the Questions, I have touched upon. They are questions of general allegiance between Great Britain and another state, not, fit I humbly conceive, to be decided in a Colony, and I submit that we should at least be as well assured as we can be of the ultimate decision, that will be formed upon them before steps are taken which will create a great sensation in the Colony, and that the Government of this Province should not hazard the Compromise of their dignity and the Public Confidence, by calling in question the alledged rights of a great portion of its people upon grounds not perfectly established.

[1]These Statutes lay down and extend the principle of English law, that wherever they may be born, the children of British subjects take the nationality of the father.

It is with great deference I submit this representation to Your Honor, whose wisdom must determine what consideration it deserves.

I have the Honor to be,
Your Honor's
Most obedient
Humble Servant

(Signed) JNO B. ROBINSON
Att^y General.

M^r President Smith
&c^ra. &c^ra. &c^ra.

Report of Executive Council, 16 April, 1818.[1]

The Council having perused the Communication of Earl Bathurst of the 30^th November last, the Draft of a Proclamation prepared by the Attorney General conformable thereto, together with that Officer's Letter of the 10^th March last, to your Honor's Secretary recommending the with holding the same for the Sanction of Your Honor and your Council desired the attendance of M^r Attorney to explain the Question of so delicate a Nature which might be affected by the Publication–

It appears that doubts exist of any legal distinction between Subjects of the United States who became Settlers and received Grants of Land in this Province before the late War without acquiring the Privileges of Natural born Subjects by the course provided by the 13^th George 2^nd and such as since the War may have come into the Province and acquired possession of Land–

That this question depends much upon the quality of the Natural born Subjects descending to the first and Second Generation of Natural born Subjects residing in foreign Countries, and appears of too much importance to be brought to any issue in this Colony until the Sentiments of His Majesty's Government may be Known– The Council informed that your Honor has Solicited the opinion of His Majesty's Law Officers on that point think it advisable to postpone the Publication of the Proclamation until such opinion is received, Sensible that the alarm of a very great proportion of Land Holders in this Province Would be excited by a doubt of the Legality of the Tenure as Sons or Grandsons of Natural born Subjects without having conformed to the course provided by the 13^th Geo. 2^nd to render Foreign Protestants capable of holding Land in His Majesty's Plantations in America.

Council Chamber – (Signed) By Order –

16^th April 1818. W^m. DUMMER POWELL

[1] *Upper Canada, State Book, F. pp. 376-377.*

THE CASE OF ROBERT GOURLAY.

Third Address to the Resident Land Owners, 1818.[1]

To the Resident Land-Owners of Upper Canada.

Niagara, April 2d, 1818.

Gentlemen,

Your Parliament is broken up!—a second time broken up,[2] from employment of the most vital import to the honor and well-being of the province!!—Good God! what is to be the end of all this?

For my own part, Gentlemen, *I had little hope of satisfaction from the sitting of Parliament, after perusing the Administrator's speech from the throne; and this little was entirely extinguished with the disgusting reply made to that speech by your Representatives.* That a man who had spent the best part of his life in Upper Canada,—whose every interest and affection rested here, should even *read* a speech, not only containing mean sentiments, but notifying a measure provoking in the extreme to the feelings of a large body of his suffering countrymen, was indeed heart-sickening: yet this was not all:— what could we expect—what sensation could swell in our breasts, when we found men, employed and *paid* by these very sufferers to guide their affairs and watch over their interests, bowing down to kiss the rod of affliction, and, in return for a most insulting offer, granting a receipt in full for demands, equally just and well authenticated?

Gracious heaven! Did we, the offspring of early civilization—the first hope of genuine liberty—the favoured wards of divine revelation, come to this new world, only to witness the degradation of our kind, and be humbled beneath the rude savage who ranges the desert woods? Surely, British blood, when it has ebbed to its lowest mark, will learn to flow again, and, yet sustain, on its rising tide, that generous—that noble—that manly spirit, which first called forth applause from the admiring world.

It has been my fate to rest here nearly two months, viewing at a distance the scene of folly and confusion,—by turns serious, and by turns jocular, that the serious might not sink into the melancholy. I have advised—I have in duty offered services, but in vain: on went the sport, till yesterday, when the cannon announced to us that the play was over; and now we have the second speech of the Administrator, who has appropriately sunk down from the throne to the chair!

Gentlemen, *the constitution of this province is in danger, and all the blessings of social compact are running to waste. For three years the laws have been thwarted, and set aside by executive power;—for three sessions have your Legislators sat in Assembly, and given sanction to the monstrous—the hideous, abuse.* A worthy catastrophe has closed this farce of government;—your Commons and your Peers have quarrelled, and, the latter would assert, that the constitutional

[1] Gourlay, *Statistical Account of Upper Canada* (London: 1822), vol. II, pp. 581-587.

[2] The Legislature of Upper Canada was prorogued on April 1, 1818, after a stormy session during which the Council and Assembly fought over the right to initiate money bills. (See Doughty & McArthur. *Constitutional Documents, pp. 540-551.*)

charter of Canada may be trifled with. What is to be done? Do you expect any thing from a new Governor?—you will be disappointed. Do you expect any thing from a new set of Representatives?—here again you will be deceived. Your Members of Assembly are now at home: compare their characters with those around them, and you will find them equally honest—equally wise—equally independent. Now that they are returned to society, as private individuals, I should be the very last man to call in question their worth or their probity: they are probably every way above par. It is not the men, it is the *system* which blasts every hope of good; and, till the *system* is overturned, it is vain to expect any thing of value from *change* of, Representatives, or, Governors.

It has been the cant of time immemorial to make mystery of the art of Government. The folly of the million, and the cunning of the few in power, have equally strengthened the reigning belief; but, it is false, deceitful, and ruinous. The people of every nation may at any time put down, either domestic tyranny or abuse,—they may, at any time, lay a simple foundation for public prosperity: they have only to be honest, and, in their honesty, bold.

In my last address to you, I said that the British constitution was "that beautiful contrivance by which the people, when perfectly virtuous, shall become all-powerful." Did you mark these words?—did you weigh them?—they are as important as they are true. We, of all men, have least to oppose us in correcting the errors of our constitution. The British constitution has provided for its own improvement, in peace and quietness; it has given us the right of petitioning the Prince or Parliament; and, this right, exercised *in a proper manner,* is competent to satisfy every virtuous desire.

My present purpose is not to dwell on theory; but to recommend and set example in the practice of using this glorious privilege. As individuals, we have a right to petition the Prince or Parliament of Britain: and we have a right to meet for this purpose in collective bodies. My proposal now is, that a meeting be forthwith held in each organized township throughout the province. I shall take upon me to name the day for the meeting of the people of this township of Niagara; and say, that on Monday next, the 13th inst. I shall be ready by 12 o'clock noon, at Mr. James Rogers' coffee-house, to proceed to business with whoever is inclined to join me. The people of each township should, I conceive, at meeting, choose a Representative and Clerk. The Representatives should assemble from the several townships, within each district, on an appointed day, to draw up a petition to the Prince Regent: and, which could, soon after, be got signed by every well wisher to the cause.

The district meetings should, without delay, hold conference by representatives, each respectively choosing one, to meet in a provincial convention,[1] and who should arrange the whole business, dispatch commissioners to England with the petitions, and hold correspondence with them, as well as with the supreme government. Two or three commissioners would suffice; and the necessary cost of carrying the whole ably and respectably into effect, would require but a trifling contribution from each petitioner. It is not going out of bounds to reckon on ten thousand petitioners, and a dollar from each would make up a

[1]This convention met at York in July, 1818. For the action of the House of Assembly see Doughty & McArthur, *Constitutional Documents, pp. 551-552.*

sum adequate for every charge. I should recommend the subscriptions and payments to commence at the first township meetings; the money to be paid to the clerks, who should keep in hand one-seventh for local and incidental disbursements, and pay over the remainder to a treasurer, to be appointed in each district, by the representatives, at their first meeting. Beyond making choice of representatives and clerks, the less that is done at township meetings the better: debate, of all things, should be avoided. The clerks should minute transactions, and keep a list of subscribers, which should immediately be published in the nearest newspaper within the province, and week after week in the same manner, should be reported, additions. The public would thus, at once, see the strength and growth of the cause, as well as have vouchers for the payment of cash. Every transaction should be plain, downright, and open to view or inspection,—every principle should be declared—every proceeding be made known.

The simplicity of all this, and the ease with which it may be accomplished, is obvious: to go into more minute detail, at present, would be wasting time. No man, by joining the cause, can lose more than a dollar, and no responsibility whatever is incurred. As I take upon me to name the day of meeting for this township of Niagara, so that meeting may appoint days for the meetings of other townships, and, for the district meeting; seeing, that it can be matter of no consequence who settles such points, provided the business, thereby, has a fair chance of commencement, and that the whole system of petitioning may proceed without doubt or delay. No man upon such solemn occasion should say, "I am greater than another, and will not be seen acting with him:" no one should say, "I am less, and therefore presume not to set myself forward." On such an occasion, and under such circumstances as the present, every party, and every personal prejudice, should be put down, every eye should be resolutely bent on the one thing needful—a radical change of system in the Government of Upper Canada.

I address myself particularly to land-owners, because their interests are most deeply involved; but every man resident in Canada—every man who is a lover of peace—who desires to see this country independent of the United States—who desires to see a worthy connexion maintained between this province and Britain;—every man, in short, who has a spark of sincerity or patriotism in his soul, has now sufficient cause to bestir himself.

There was a time when Israel was famished with intense drought. Day after day, and week after week, the uncovered sun rose, only to frighten the nation, and open more wide the yawning fissures of the scorched earth:—there was yet however faith in Israel; and the faith of a few brought, at last, salvation to the expiring multitude. Let not the ancient record be lost to these modern days; let not the signs and figures of the material world be thrown aside as vain emblems, illustrations, and manifestations of the will, the power, and the goodness of God. He never deserts his creatures while they are true to themselves and faithful to him,—while they honourably put to use the divine gifts of rationality. The course to be pursued by the people of this province, at the present juncture, is so clear, that he who runs may read: they have only to put trust in the success of their own virtuous endeavours; and, success will as surely follow, as day succeeds to night—yes, worthy inhabitants of this township of Niagara,

you may begin the necessary work with confidence:—the little cloud which rose from the horizon, at first no bigger than a man's hand, gradually expanded—mantled over the relentless face of a burning sky, and at last showered down refreshment on the thirsty land.

The good which may result, not only to this province, but to the general cause of truth, should these proposals be *cheerfully* and *alertly* adopted, surpasses all calculation. It would be needless for me now to descant on the subject. If there is really no public spirit in the country, I have already thrown away too much of my time: if there is, let it now be shown, for never was occasion more urgent. If the people of Canada do not *now* rouse themselves, they may indeed have plenty whereon to exist; but to that "righteousness which exalteth a nation," they will have no claim. The farmer may plod over his fields,—the merchant may sit, drowsy and dull, in his store; but the life, the vigour, the felicities of a prosperous and happy people will not be seen in the land:—the superiority of public management in the United States will bother [sic] all hope of competition: America will flourish, while Canada sinks into comparative decay; and another war will not only bring with it waste and destruction, but ignominious defeat.

In the scheme proposed I will accept of no appointment; but persons acting in it shall have my utmost assistance, and I shall make clear to them every course to be pursued. As soon as matters come to a head, all information, collected by me, shall be at the disposal of the Commissioners; and even better consequences may be expected from this popular movement, than any that could have followed from the parliamentary inquiry, had that been allowed to proceed. It will shew, that though the rights of Parliament may be trifled with, those of the people of Upper Canada are not so easily to be set at defiance.

The Assembly of the Lower Province is to petition the British Parliament as to their trade: your representatives are to petition the Regent as to their privileges: when I found my petition set aside and despised at York, I dispatched one immediately to be presented to the House of Commons in England, to call attention there, to Canadian affairs:—all this will go for little, if something else is not done. You have read in the newspapers of my scheme having been discountenanced by Ministers at home: you have read of speculations upon making the best bargain with the United States for these provinces. I know whence all this proceeds: I know what would open the eyes of the people and Government at home to the true value of the Canadas, and put an end to such unnatural—such disgusting surmises; and all this I shall be happy to explain, as soon as explanation can be useful. One thing I am very sure of, that if the people of Canada will only do their duty as honest men, and as brothers, in unity, not only every just claim may be paid by next Christmas, but a foundation may be laid for this province becoming speedily the most flourishing and secure spot on the habitable globe.

ROBERT GOURLAY.

Order to Commit Robert Gourlay, 4 Jan., 1819.[1]

Order of Commitment. George the Third by the Grace of God of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith, &c.

To our Sheriff of the District of Niagara, Keeper of the Jail therein, or to the Jailor thereof, greeting.

Whereas, by an Act of the Provincial Parliament of Upper Canada, passed in the forty-fourth year of our reign, intituled "An Act for the better securing this Province against all seditious Attempts or Designs to disturb the tranquility thereof," it is enacted that (*here that part of the Act recited which is printed above in Italics.*)[2]

And, Whereas, we William Claus and William Dickson, each a Member of our Legislative Council of the said Province of Upper Canada, duly authorized in and by virtue, of the said Act, did, on the information and complaint of Isaac Swayze, one of the Members of the House of Assembly, on oath made before the said William Dickson, that one Robert Gourlay, now in the Town of Niagara in the County of Lincoln, in said Province, who, the said Isaac Swayze, believes to have no particular or fixed place of residence, is an evil-minded and seditious person and that the public tranquility of said Province was endangered by the unrestrained residence of such a person, and that the said Robert Gourlay, by words, actions, writings, and other behaviour, hath endeavoured, and is endeavouring to alienate the minds of our Subjects in this Province from our person and Government, and that the said Robert Gourlay, if in his power, from his language words and writings, is endeavouring to raise a rebellion against our Government in this Province, and that Isaac Swayze, verily believes that the said Robert Gourlay has not been an inhabitant for six Months, preceding the date of said Information, and had not, at the time of said information, taken the Oath of Allegiance, to us; and whereas, a warrant was granted and tested in the name of the said William Dickson and William Claus, dated the 19th day of December, now last past, and directed to the Sheriff of our district of Niagara, requiring him to arrest the said Robert Gourlay, to the end, that he might be brought before the said William Dickson and William Claus or either of them; and whereas the said Robert Gourlay was accordingly brought up before the said William Dickson and William Claus, on the 21st day of December, now last past, and being examined touching the said information, and of, and concerning his words, actions, conduct, and behaviour; he did not give full and complete satisfaction to the said William Dickson and the said William Claus, that his words, action, conduct, and behaviour had no such tendency; on the contrary, that these were intended to promote disaffection to our person and Government; and having given no satisfactory proof that he has been an inhabitant of the said Province for the space of six Months preceding the date of such Warrant, nor did he prove that he had taken the Oath of Allegiance to us, as by the said Act is mentioned; and whereas the said William Dickson and William Claus did thereupon deem it inexpedient under the provision of the said Act, that the said Robert Gourlay should be permitted to remain in this Province; and did adjudge that the said Robert Gourlay should

[1] *Q. 332, pp. 172-176.*
[2] A copy of the Act in full follows this document.

depart this Province of Upper Canada on or before the first day of January next ensuing, thereof, and was required so to depart this province, by an order in writing to that effect, and personally delivered to him, at the Court House for said district, on the said 21st day of December, now last past.

And whereas Information hath been given to [sic] the said Robert Gourlay, hath not departed this Province on or before the 1st day of January instant, the time limited in the said Order in writing, but still abides, and is at large therein. These are therefore in pursuance of the said before recited Acts, to authorize and require you, if the said Robert Gourlay shall be found at large in your district, to commit him to the common jail thereof, there to remain without bail or mainprize, unless delivered therefrom, as the said Act directs.

Witness, William Claus and William Dickson, Legislative Councillors as aforesaid, under the hand and Seal of each this 4th day of January, in the year of our Lord one thousand eight hundred and nineteen, and of our reign the fifty-ninth.

(signed) WILLIAM DICKSON
WILLIAM CLAUS

Upper Canada 44 Geo. III Cap. 1,[1] (1804).

An Act for the better securing this Province against all Seditious Attempts or Designs to disturb the Tranquility thereof.

(passed 9th March 1804.)

Preamble.

Whereas it is necessary to protect his Majesty's Subjects of this Province from the insidious attempts or designs of evil-minded and seditious persons; and, whereas much danger may arise to the Public Tranquillity thereof, from the unrestrained resort and residence of such persons therein; Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Upper Canada, Constituted and assembled by virtue of, and under the Authority of an Act passed in the Parliament of Great Britain, intituled "An Act to repeal certain Parts of an Act passed in the fourteenth Year of His Majesty's Reign, intituled "An Act for making more effectual Provision for Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province," and by the Authority of the same, That, from and after the passing of this Act, it shall and may be lawful, for the Governor, Lieutenant Governor person administering the Government of this Province, for the Members of the Legislative and Executive Councils, the Judges of His Majesty's Court of King's Bench, for the time being, respectively, or for any person or persons authorized in that behalf, by an instrument under the hand and Seal of the Governor, Lieutenant Governor, or person administering the Government for the time being, or any one or more of them, jointly or separately, by Warrant or

Governor, &c. Empowered to authorize certain persons to arrest offenders against this Act.

[1] *Q. 332, pp. 162-171.* This Act was repealed in 1829.

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Warrants, under his or their hand and seal, or hands and Seals to arrest any person or persons not having been an inhabitant or inhabitants of this Province for the Space of six months, next preceding the date of such Warrant or Warrants, or not having taken the Oath of Allegiance to our Sovereign Lord the King, who by words, actions or other behaviour or conduct, hath or have endeavoured, or hath or have given just cause to suspect that he, she, or they, is or are about to endeavour to alienate the minds of His Majesty's Subjects of this Province from his person or Government, or in any wise with a seditious intent to disturb the tranquility thereof, to the end that such person or persons shall forthwith be brought before the said person or persons so granting such Warrant or Warrants against him, her or them, or any other person or persons duly authorized to grant such Warrant or Warrants by virtue of this Act: and if such person or persons not being such inhabitant or inhabitants as aforesaid, or not having taken such Oath of Allegiance, shall not give to the person or persons so granting such Warrant or Warrants so authorized as aforesaid, before whom he, she, or they shall be brought, full and complete Satisfaction, that his, her, or their words, actions, conduct, or behaviour had no such tendency, or were not intended to promote or encourage disaffection to his Majesty's person or Government, it shall and may be lawful for each or any of the said persons so granting such Warrant or Warrants, or so authorized as aforesaid, and he and they is and are hereby required to deliver an Order or Orders, in writing to such person or persons, not being such inhabitant or inhabitants as aforesaid, or not having taken such Oath of Allegiance, requiring of him, her, or them, to depart this Province within a time to be limited by such order or orders, or if it shall be deemed expedient that he, she or they should be permitted to remain in this province, to require from him, her, or them, good and sufficient security, to the satisfaction of the person or persons acting under the Authority hereby given, for his, her, or their good behaviour, during his, her, or their continuance therein.

Offenders to depart the province, or give security &c.

II. And be it further enacted, by the Authority aforesaid, That if any person or persons not being such inhabitant or inhabitants as aforesaid, or not having taken such Oath of allegiance, who by any order or orders so delivered to him, her, or them, is or are required to depart this Province, within a time limited by that order, should by sickness, or other impediment, be prevented from paying due obedience to the same, it shall and may be lawful for the person or persons who hath or have issued such order or orders as aforesaid, or for any other person or persons as aforesaid authorized by this Act so to do, (the person or persons acting under the authority hereby given, being first satisfied that such impediment by sickness, or otherwise, ought to be admitted as a reason for such order as aforesaid not having been obeyed) by an indorsement in writing upon the said order or orders, or otherwise in writing to enlarge the time specified

Time for offenders departing the Province may be enlarged.

in the said order or orders, from time to time, as occasion may require; and if any person or persons so having been required or ordered to quit this Province as aforesaid, and not having obtained an enlargement of such time, in manner herein before Specified, should be found at large therein, or return thereunto, after the time limited by any or either of such orders, without licence from the Governor, Lieutenant Governor, or person administering the Government for the time being in that behalf; or in case any person or persons who shall have been served with any or either of such order or orders as aforesaid, or who shall have been permitted to remain in this Province, upon such security as aforesaid, shall by words, Actions or otherwise endeavour, or give just cause to suspect, that he, she, or they, is or are about to endeavour to alienate the minds of His Majesty's Subjects of this Province from his person or Government, or in any wise with a seditious intent to disturb the tranquility thereof, it shall and may be lawful for any one or more of the said person or persons so authorized by this Act as aforesaid, and he and they is and are hereby required by Warrant or Warrants under his or their hand and seal, or hands and Seals, to commit such person or persons so remaining at large, or returning into this Province without such licence as aforesaid, or so endeavouring or giving cause to suspect that he, she, or they, is or are about to endeavour so to alienate the minds of His Majesty's Subjects of this Province, or in any wise with a seditious intent to disturb the tranquility thereof to the common Gaol, or to the Custody of the Sheriff of the District, in such districts in which there shall be no jail at that time, there to remain, without bail or mainprize, unless delivered therefrom by special order from the Governor, Lieutenant Governor, or person administering the Government for the time being, until he, she, or they can be prosecuted for such Offence in His Majesty's Court of King's Bench, or of Oyer and Terminer and general jail delivery in this Province, or under any Special Commission of Oyer and Terminer to be issued by the Governor, Lieutenant Governor or person administering the Government of this Province for the time being; and if such person or persons, not being such inhabitant or inhabitants as aforesaid, or not having taken such oath of allegiance, shall be duly convicted of any of the Offences herein before described, in either of the said Courts respectively, he, she or they shall be adjudged by such Court forthwith to depart this Province; or to be imprisoned in the Common jail, or be delivered over to the Custody of the Sheriff in such districts in where there shall be no jail at that time for a time to be limited by such Judgment, and at the expiration of that time, to depart this Province; and if such person or persons so convicted as aforesaid, shall remain in this Province, or return thereinto, after the expiration of the time to be limited by the said Judgment, without licence from the Governor, Lieutenant Governor, or person administering the Government for the time being, in that behalf first had and obtained, such person or

If after security given person give cause to suspect, &c.

Such person to be committed.

Punishment if convicted.

persons, on being duly convicted of so remaining or returning, before either of the said Courts, shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy—Provided always, that if, in the Execution of the powers hereby given any question shall arise touching or concerning the space of time during which any person or persons shall have been an inhabitant or inhabitants of this Province, previous to any warrant or warrants having been issued against him, her, or them, or touching or concerning the fact of any person or persons having taken such oath of allegiance, the proof shall, in all such cases, lay on the party or parties against whom any such Warrant or Warrants shall in virtue of the Powers hereby given, have been granted or issued.

Proof to lay on the person charged.

If any person suing under colour of this act become non-suited, etc.

III. And be it further enacted by the Authority aforesaid, That if any person or persons, at any time shall be sued or prosecuted for any thing by him or them done in pursuance, or by Colour of this Act, or of any matter or thing therein contained, such Action or prosecution shall be commenced within three Calendar months next after the Offence shall have been committed, and such person or persons may plead the general issue, and give the special matter in evidence for his, her or their defence, and if, upon trial, a verdict shall pass for the defendant or defendants, or the plaintiff or plaintiffs shall become non-suited, or shall discontinue his, her, or their suit, or prosecution, or if Judgment be given for the defendant or defendants, upon demurrer or otherwise, such defendant or defendants, shall have treble costs to him or them awarded against the plaintiff or plaintiffs.[1]

treble costs.

CONTROL OVER INDIANS[2].

Richmond to Assembly, Lower Canada, 2 February, 1819.

Gentlemen,

The Title Deeds of the Fiefs of *Sillery* and *Saint Gabriel,* which are now vested in the Crown, being Public Documents, to which all His Majesty's subjects have a right of access, directions shall be given to the Deputy Secretary of the Province, and to the Prothonotaries of the Court of King's Bench, in whose custody those Documents are kept, to lay Copies thereof before the Assembly, whenever required by that House so to do.

Being, however, apprized by the Journals of the Assembly, of the circumstances which have led to the present application, I think it necessary on this occasion to acquaint the House, that the several Tribes of Indians residing within the Province of *Lower-Canada*, are, for weighty reasons of state, under the immediate superintendance and protection of the Crown, and that their

[1] *Repealed, March 26, 1829.*

[2] *Journals of Assembly, Lower Canada, 1819, p. 41.* This document is a reply to the request of the Assembly for documents connected with fiefs of Sillery and St. Gabriel, which was made as a result of a debate in which that body regarded itself as responsible for the welfare of the Indians.

respective claims to lands heretofore held by the late Order of Jesuits in this Province, have long since been fully investigated and determined upon, by Tribunals appointed under the Royal authority for that purpose.

Should circumstances at any time occur, to render legislative interference necessary, of which His Majesty must be the judge, due information will be given thereof to both Houses of the Provincial Parliament.

IMPEACHMENT OF JUDGE BEDARD,[1] 1819[2].

Resolutions of Assembly, Lower Canada, 5 February, 1819.

Charles Richard Ogden, Esquire, Member for the Borough of Three Rivers, in his place, charged *Pierre Bedard,* Esquire, Provincial Judge for the District of *Three Rivers,* with divers high crimes and misdemeanors, and presented to the House several articles of accusation and impeachment against the said *Pierre Bedard,* Esquire, and the said articles of accusation and impeachment were delivered in at the Clerk's Table, and read, and are as followeth:

First. That *Pierre Bedard,* Esquire, being Provincial Judge for the District of *Three Rivers,* and also one of the Judges of His Majesty's Court of King's Bench for the said District, hath totally disregarded the high and important duties attached to those offices, hath prostituted his judicial authority to the gratification of personal malice, hath infringed the personal liberty of divers of His Majesty's Subjects, and by perverse, obstinate and tyrannical conduct, hath disgraced the elevated judicial situations in which he was placed.

Second. That the said *Pierre Bedard,* Esquire, being Provincial Judge as aforesaid, for the District of *Three Rivers,* and also one of the Judges of His Majesty's Court of King's Bench for the said District, hath in contravention to the Laws in force in this Province, and without any just or reasonable cause or pretext whatsoever, imprisoned divers of His Majesty's loyal subjects, for pretended offences, by them, supposed to have been committed towards him, the said *Pierre Bedard,* Esquire, as such Provincial Judge as aforesaid, and hath exercised an unjust, illegal, and unconstitutional authority, by declaring them guilty of the crime of contempt, in certain cases unauthorized by law, and by imposing upon them fines and disabilities to which they were not liable by the laws of the land.

Third. That the said *Pierre Bedard,* Esquire, being such Provincial Judge as aforesaid, and one of the Judges of His Majesty's Court of King's Bench, for the said District of *Three Rivers,* hath in the discharge of his respective duties as such Provincial Judge, and Judge of the said Court of King's Bench, uttered expressions derogatory to the honour, ability and integrity of the other Judges of the said Court of King's Bench, and also of the Barristers and Practitioners therein, tending to reflect unmerited odium upon the Dispensers and Practitioners of Law, and hath both by actions and words, degraded

[1] Pierre Stanislas Bedard (1762-1829) one of the founders and early editors of *Le Canadien* who was arrested in 1810. (See Doughty and McArthur, *Constitutional Documents, p. 379 ff.*) He was a member of the Assembly from 1792 to 1812 when he was made a judge.

[2] *Journals of the Legislative Assembly, Lower Canada, 1819,* pp. 56-57.

the dignity of his judicial situations, and brought the administration of justice in this Province, and more particularly in the said District of *Three Rivers,* into disrepute and contempt.

Fourth. That the said *Pierre Bedard,* Esquire, being such Provincial Judge as aforesaid, hath in the discharge of his duties as such Provincial Judge, uniformly conducted himself, towards the Barristers and Advocates practising in the said Court, in a violent and abusive manner, hath at divers times accused many of them of high breaches of moral and professional rectitude, and hath publicly advanced opinions tending to induce a belief that they were deficient in the learning and talents requisite to the conscientious discharge of their professional duties, and generally tending to subvert their characters, and destroy the confidence of their clients and the public, in their professional knowledge and exertions.

Fifth. That the said *Pierre Bedard,* Esquire, being such Provincial Judge for the said District of *Three Rivers* as aforesaid, did, on or about the third day of June, one thousand eight hundred and sixteen, falsely, wickedly and maliciously, contrary to his own knowledge and the known Laws of this Province, imprison, and cause to be imprisoned in the common Gaol of the said District of *Three Rivers, Charles Richard Ogden,* Esquire, then and still being His Majesty's Counsel for the said District, for an alleged Libel and contempt against the said Provincial Court.

Sixth. That the said *Pierre Bedard,* Esquire, being such Provincial Judge as aforesaid, did on or about the tenth day of October, one thousand eight hundred and sixteen, illegally and in contempt of the known Laws of this Province, and without any reasonable cause or pretext whatsoever, condemn *Pierre Vezina,* Esquire, an Advocate practising in the said Court, to pay a fine of ten shillings, for pretended contemptuous conduct, while in the discharge of his duty to his client, and to be imprisoned until the said fine was paid, to the manifest injury and oppression of the said *Pierre Vezina,* in violation of his liberty as a British subject, and of his privileges as such advocate.

Seventh. That the said *Pierre Bedard,* Esquire, being such Provincial Judge as aforesaid, did on the sixth and seventh day of April, one thousand eight hundred and eighteen, and at divers other times, while presiding in the said Provincial Court, and exercising his judicial functions, grossly and unjustifiably attack the professional character of *Joseph Godefroy de Tonnancour,* Esquire, then being an Advocate in the said Court, and falsely and maliciously attributed to him the said *Joseph Godefroy de Tonnancour,* Esquire, an intention to lead the Court into error, by false references and citations, and to supprise thereby a judgement on behalf of his Client; and did also charge the said *Joseph Godefroy de Tonnancour,* Esquire, with other practices dishonourable to himself, and derogatory to his professional character and reputation, to the manifest injury of the said *Joseph Godefroy de Tonnancour,* Esquire, and his Colleagues collectively, tending to bring their character and reputation into contempt and disgrace, and in gross violation of his dignity as such Provincial Judge.

On motion of Mr. *Panet*, seconded by Mr. *Neilson*.

Resolved, That the said Articles of Accusation and Impeachment, be referred to a Committee of five Members, to examine the matter thereof, and evidence thereon, and to report with all convenient speed, with power to send for persons, papers and records.[1]

THE STRUGGLE FOR FINANCIAL CONTROL.

Resolutions of Assembly, Lower Canada, 27 March, 1819.[2]

(Extracts from report of Committee on the Estimate for the Civil List for the year 1819)

An Agent for the Province to reside in London, is an Officer, in the opinion of your Committee, properly of the nomination and appointment of the Legislature of this Province, and your Committee regret, that any person avowedly an Officer of the Representatives of this Province, and amenable to them in the Assembly thereof, should have been appointed and placed upon the Civil List of the Province, without their consent and approbation. Your Committee cannot but remind your House, of the many fruitless constitutional attempts made to appoint such an Officer, and the constant opposition made to it by other Branches of the Legislature. Until this Province shall have a constitutional Agent, your Committee cannot recommend the recognition of such an Officer, appointed as he has been, nor the making any provision for the payment of his Salary.

. . . . . .

From every circumstance connected with the Estimates of the current year, your Committee are of opinion that retrenchment ought to take place. The internal improvement of the Province, is, in the opinion of your Committee, the first duty of its Legislature, and that duty will be most efficiently performed in reducing the overgrown bulk of the Civil List of the Province, the progress of which, in every species of public improvement, seems to have been tardy in the direct proportion of the speed with which the expenses have accumulated. In expressing these sentiments, your Committee turn with confidence to the recent system of rigid economy adopted by the Mother Country whose example in this instance is worthy of the imitation of this Colony, and will lead to the most salutary results.

That those Functionaries, however, whose time and talents are exclusively devoted to the public service, should be liberally remunerated, is but just and equitable. They are precluded from the exercise of that industry which in the common intercourse of society might secure a competence; and it behoves the

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[1] This impeachment fell to the ground but not without having caused Bedard much anguish. Writing to Neilson on the subject, 20 July 1819, he said: "j'ai recu l'enquête du committé à mon sujet, mes accusateurs ont entièrement gagné ce qu'ils vouloient qui est de jetter un ridïcule sur moi dont il ne me sera jamais possible de me debarasser et qui me fait beaucoup plus de tort que si j'avais été trouvé coupable de quelque fait grave." *Neilson Papers, Vol. 3, p. 345.*

[2] *Journals of Assembly, Lower Canada, 1819, Appendix L.*

state liberally to provide for its Officers, in order that Offices may be worthy of the acceptance of men of talents, integrity and influence, which otherwise would become the patrimony of an indolent, an inexperienced and supercilious herd of dependants.

Your Committee, upon the whole, are of opinion, that in making a suitable provision for such Offices as are indispensably necessary, this House will at the same time act in conformity with the desire and interests of the Province at large, by making an unqualified reduction of those Sinecures and Pensions, which in all countries have been considered as the reward of iniquities, and the encouragement of vice; which in the Mother Country have been, and still are a subject of complaint; and which in this Province, will ultimately lead to corruption.

The whole, nevertheless, humbly submitted.

AUSTIN CUVILLIER,
Chairman.

Resolutions of Assembly, Lower Canada, 17 April, 1819[1].

Mr. M'Cord, from the Committee of the whole House, to whom it was referred to consider of the Supply to be granted to His Majesty, reported, according to order, the Resolutions of the Committee: and he read the Report in his place, and afterwards delivered it in at the Clerk's Table, where the Resolutions were again read, as followeth:

1. *Resolved,* That it is the opinion of this Committee, that a sum not exceeding four thousand five hundred pounds sterling, be granted to His Majesty, towards defraying the Salary of the Governor in Chief, from the first November, one thousand eight hundred and eighteen, to the thirty-first October, one thousand eight hundred and nineteen, inclusive.[2]

. . . . . .

Mr. *Cuvillier* moved,[3] seconded by Mr. *Robitaille,* that the question of concurrence be now put on the said Resolutions.

Mr. *Vanfelson* moved, in amendment, seconded by Mr. *Ogden,* that all the words after "that," be struck out, and the following substituted: "the Message and Estimate transmitted to this House by His Grace the Governor in Chief, for the year one thousand eight hundred and nineteen, have not been proceeded upon, and that the proceedings of the Committee of the whole House, providing for the expenditure of the current year, and now offered to this House for its approbation and concurrence, are unparliamentary, unconstitutional and unprecedented." . . . . .

So it passed in the negative.

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[1] *Journals of Assembly, Lower Canada, 1819, pp. 238-239.*

[2] This extract is given as typical of the manner in which the Assembly discussed and voted the salaries item by item. They proceeded in the same way throughout the list.

[3] *Journals of Assembly, Lower Canada, 1819, p. 252.*

RESOLUTIONS OF LEGISLATIVE COUNCIL, LOWER CANADA, 21 APRIL, 1819.[1]

The Order of the day being read for the second reading of the Bill, intituled, "An Act to appropriate a certain sum of money to defray the expences of the Civil Government of this Province, for the year one thousand eight hundred and nineteen;"

It was thereupon moved to resolve,

That the mode adopted by this Bill for granting a supply to His Majesty to defray the expences of the Civil List, is unprecedented and unconstitutional, and a direct assumption on the part of the Assembly of the most important rights and prerogatives of the Crown; that were this Bill to be passed into a Law it would give to the Commons of this Province, not merely the constitutional privilege of providing the supplies, but the power also of prescribing to the Crown the number and description of its servants, and of regulating and rewarding their services individually as the Assembly should, from time to time, judge meet or expedient, by which means they would be rendered dependant on an elective body instead of being dependant on the Crown, and might eventually be made instrumental to the overthrow of that authority, which, by their allegiance they are bound to support.

It was resolved in the affirmative.

It was then moved,

That this House will proceed no further in the consideration of this Bill.

It was resolved in the affirmative.

RICHMOND'S SPEECH ON PROROGUING THE LEGISLATURE, 24 APRIL, 1819.[2]

. . . . . .

You, Gentlemen of the Legislative Council have not disappointed my hopes, and I beg to return you my thanks for the zeal and alacrity you have shewn in all that more immediately belongs to your Body.

It is with much concern I feel myself compelled to say, that I cannot express to you, Gentlemen of the Assembly, the same satisfaction, nor my approbation at the general result of your labours, (at the expense of so much valuable time), and of the public principles upon which they rest, as recorded on your Journals.

You proceeded upon the Documents which I laid before you, to vote a part of the sum required for the Expenses of the year one thousand eight hundred and nineteen, but the Bill of Appropriation which you passed, was founded upon such principles, that it appears from the Journals of the Upper House to have been most constitutionally rejected: His Majesty's Government has been thus left without the necessary supplies for supporting the Civil Administration of the Province for the ensuing year, notwithstanding the voluntary offer and pledge given to His Majesty, by the Resolve of your House, of the thirteenth of February, one thousand eight hundred and ten.

[1] *Journals of Legislative Council, Lower Canada, 1819, p. 142.*
[2] *Journals of Assembly, Lower Canada, 1819, p. 268.*

Gentlemen of the Legislative Council, and
Gentlemen of the House of Assembly,

I recommended to you by Special Message, the consideration of the Judicature Act, for such amendments as should appear necessary to remedy any inconvenience which time and experience in the course of the administration of justice, may have pointed out as expedient: and I much regret, that this important object has not been brought so far to an issue, as would have enabled me to transmit the result of your proceedings to His Majesty's Ministers, that the opinion and assistance of the Law Officers of the Crown in *England*, might have been obtained, in aid of the local knowledge and practical experience of those characters in this Province, who have had the best opportunity of studying and understanding the subject. I trust, however, that you will be prepared to proceed effectually thereon, at an early day of the next Session.

Maitland to Bathurst, 19 July 1819.[1]

York, U. Canada
July 19- 1819

No. 43

My Lord,

I have the honor to call your attention to a material alteration in the disposal of the Revenue which I established in the last Session—

The whole Revenue, had, I found, been thrown into one mass, and made subject to the House of Assembly, so that there remained nothing at the disposal of the Crown— The Supply had always been granted with difficulty, and frequently it left some of the Officers salaries unprovided for— These embarrassing circumstances induced me to examine minutely the subject of Revenue, and I found it ought to be divided into three distinct Branches—

1st The King's Rights; arising from the Rents of Crown Reserves, Ferries, Fees from the Great Seal &c &c—

2dly The Revenue that accrues from British Acts of Parliament and is appropriated to defray the charges of the Civil List and administration of Justice. This constitutes a considerable part of the Revenue—

3rdly The Revenue arising from the Provincial Acts, of which the Colonial Legislature has the undoubted appropriation or disposal—

The Revenue arising from the King's rights, tho' at present very small, will rapidly increase—

I sent the Parliament a Message, explaining that I should, in future, render no account of this except to the Lords Commissioners of His Majesty's Treasury. The House of Assembly was given next to understand, that the Revenue produced by virtue of British Acts, must be confined to its destination, and, that instead of placing it with the Revenue arising from Provincial Acts before Parliament, in one sum, and then requesting a supply; it should be appropriated to meet the charges for the Civil List, as far as it would go, and that the House of Assembly should only be called on to provide for the Excess.

[1] *Q. 325, pp. 273-275.*

This new arrangement, which has been concurred in by the Parliament, will, I hope, meet Your Lordship's approbation; and I would suggest, with deference, that no Lieut. Governor of this Province, should in future be permitted to relinquish the King's Rights, nor abandon the appropriation of the Revenue arising from British Acts, to the vote of the House of Assemby—[1]

I have the Honor to be,
My Lord,
Your Lordship's
Most obedient
Humble Servant

P. MAITLAND,
Lt. Gov^r.

The
Rt. Honble
EARL BATHURST K.G.
&c &c &c

MAITLAND TO ASSEMBLY, UPPER CANADA, 11 JUNE, 1819.[2]

P. MAITLAND.

The Lieutenant Governor, in transmitting the Public Accounts and Estimates for the expenditure and supply for the ensuing year, omitted to notice the proceeds of certain casualties and territorial Revenue, which had on a former occasion been erroneously stated as applicable to defray the charge of the Administration of Justice and the Civil Government of the Province.

The Lieut. Governor herewith transmits, for the information and satisfaction of the Legislature, details of that branch of the Kings Revenue subject exclusively to the signification of His Majesty's pleasure, noting the appropriation already authorized.

11th June, 1819 P.M.

Casualties and Teeritorial [sic] Revenues on an average of the last three years.

1st. Rent of Ferries, &c and Crown Lands..	£ 529
2nd. Fines not appropriated by Statute..	371
3rd. Reserved on grants of land..	870
Total..	£1,770

[1] The step taken by Maitland in this matter met with the full approbation of the Colonial Office. Lord Bathurst wrote in reply, 27 September, 1819: "The alteration which has been made also during the last Session in the disposal of the Colonial Revenue is in every respect most desirable and proper, and I so entirely concur with you in opinion as to the necessity of excluding the Assembly from all participation or controul over the acknowledged revenues of the Crown that I shall not fail to submit to His Royal Highness an instruction for more effectually guarding in future against a recurrence of that negligence which originally subjected it to the consideration of the House of Assembly." *G. 59, pp. 184-185.* A similar classification of the Revenue of Lower Canada is to be found in *State Book J., Lower Canada, pp. 88-97.*

[2] *Journals of Assembly, Upper Canada, 1819, pp. 16-17.*

No. 1. These casualties are so exclusively at the disposal of the King that he may grant them for ever at pleasure, without reservation of rent or other consideration, therefore it was obviously improper to submit them to the appropriation of the Legislature as applicable to defray the charges of the Civil Government.

No. 2 This class of casualties is also exclusively dependent upon the prerogative to remit or grant ad libitum without account to the Legislature, and this prerogative His Majesty's Government are sworn to maintain.

No. 3. His Majesty grants lands to whom and on what conditions he pleases, an unquestionable prerogative.

Out of the small fund accumulated from the casualties in this Province, amounting on an average of the last three years to £1,770, but for the present year probably not amounting to £1,000, His Majesty has made an appropriation of £1,000 to the Lieutenant Governor, in lieu of fees of office, heretofore received by him in detail.

Opinion of Attorney General on Fines and Forfeitures, June 10, 1819.[1]

Sir

I have considered the question referred to me in Your letter of the 8th Inst "how far any Law subjects the Proceeds of fines imposed by Law and sentences of Courts, and the King's part of forfeitures on penal Statutes to the appropriation of the Provincial Legislature, and beg to report my opinion that there is no law subjecting these ordinary Branches of His Majesty's Hereditary Revenue to the disposition of the Parliament of this Province, but that they stand upon the same footing as the same sources of Revenue did in England before they were thrown into the aggregate fund, and made part of the general Revenue subject to the disposition of Parliament, by the spontaneous assent of His present Majesty, upon the present permanent provision being made for the Civil List soon after his accession to the throne.

I have the honor to be
Sir
Your most Obedient
Humble Servant

Jn° B Robinson
Attʸ Genˡ

Major Hillier
Secʸ to his Excyʸ
The Lieutᵗ Governor

[1] *Upper Canada Sundries, 1819.*

CLERGY RESERVES

ADDRESS OF ASSEMBLY, UPPER CANADA TO MAITLAND, 2 JULY, 1819.[1]

To His Excellency, Sir Peregrine Maitland, K.C.B., Lieutenant Governor of the Province of Upper Canada, and Major General Commanding His Majesty's Forces within the said Province.

May it please Your Excellency:—

We, His Majesty's dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, most humbly request that Your Excellency would be pleased to direct the proper Officer to lay before this House an account of the Clergy Reserves leased, with the Revenue arising therefrom and its appropriation up to the thirty-first of December last, so far as the same is ascertained.

(Reply of Maitland to the above request, 5 July, 1819)[2]

Gentlemen:—The Clergy Reserves and Revenues arising from them, an account of which you have requested to be laid before you, are placed by the British Parliament under the control of the King. I shall therefore pray for the instructions of His Royal Highness the Prince Regent on the subject of Your Address.

OPINION OF LAW OFFICERS OF CROWN, 1819.[3]

Doctors Commons
15th November 1819.

My LORD,

We are honored with your Lordships Commands of the 14th September last, stating that doubts having arisen how far under the construction of the Act passed in the 31st year of His present Majesty. /Cap-31/ the dissenting protestant ministers resident in Canada have a legal claim to participate in the Lands by that Act directed to be reserved as a provision for the support and maintenance of a protestant Clergy.[4]

And your Lordship is pleased to request that we would take the same into Consideration and report to your Lordship for the Information of the Prince Regent Our Opinion whether the Governor of the Province is either required by the Act or would be justified in applying the produce of the reserved Lands to the maintenance of any other than the Clergy of the Church of England resident in the Province, and in the event of our being of Opinion that the ministers of dissenting protestant Congregations have a concurrent claim with those of the Church of England—further desiring our Opinion, whether in applying the reserved Lands to the Endowment of Rectories and Parsonages, as required in

[1] *Journals of Assembly, Upper Canada, 1819, p. 99.*
[2] *Ibid. p. 108.*
[3] *Q. 326, pp. 43-46.*
[4] The question had been referred to England in a despatch from Maitland to Bathurst, 17 May 1819. Maitland declared that the Law Officers of Upper Canada were of the opinion that the reserves should be applied only to the Church of England and added—"I beg leave to observe to Your Lordship, with much respect, that your reply to this petition will decide a question which is of much interest, and on which there is a lively feeling throughout the Province." *Q. 325, pp. 197-198.*

the 38th Clause, it is incumbent upon His Majesty to retain a proportion of those Lands for the maintenance of the dissenting Clergy, and as to the proportion in which, under such a construction the Provision is to be assigned to the different classes of dissenters established within the Province—

We are of Opinion that tho' provisions made by the 31st-George 3rd Chap. 31- Sect. 36 and 42 for the support and maintenance of a protestant Clergy, are not confined solely to the Clergy of the Church of England, but may be extended also to Clergy of the Church of Scotland if there are any such settled in Canada (as appears to have been admitted in the debate upon the passing of the Act) yet that they do not extend to dissenting Ministers since we think the terms protestant Clergy can apply only to Protestant clergy recognized and established by Law.

The 37th Section which directs, "that the Rents and profits of the Lands &ca- shall be applicable solely to the maintenance and support of a protestant Clergy-" does not specify by what authority the Rents and profits are to be so applied —Supposing the Governor to be duly authorized by the Act to make such application, We think that he will be justified in applying such Rents and profits to the maintenance and support of Clergy of the Church of Scotland as well as those of the Church of England, but not to the support and maintenance of Ministers of dissenting protestant Congregations.

With respect to the 2nd question The 38th Clause "which empowers His Majesty to authorize the Governor to constitute and erect Parsonages or Rectories according to the Establishment of the Church of England-" provides also "that he may endow every such Parsonage or Rectory with so much of the Lands allotted and appropriated in respect to any Land within such Township or Parish which shall have been granted, as the Governor with the advice of the Executive Council shall judge to be expedient-"

Under these terms he might endow any particular parsonage or Rectory with the whole Lands allotted and appropriated in that Township or Parish-

It would be inconsistent with this discretionary power that any proportion of such Lands should be absolutely retained for any other Clergy than those mentioned in that Clause, and we think that it is not incumbent on His Majesty so to retain any proportion of such Lands- [1]

We have the Honor to be,
My Lord
Your Lordships,
most obedient
humble Servants

CHRISTr ROBINSON
R. GIFFORD
J S. COPLEY

Earl Bathurst
&c &c &c

[1] In transmitting this decision to Maitland by letter of 6 May, 1820, Lord Bathurst said: "I have therefore to acquaint you that although it would be generally speaking most expedient to make in the first instance a competent provision for the Church of England in the Colony, yet in every Parish in which the members of the Church of Scotland may greatly predominate it appears both advisable and proper that a proportionate allotment should be reserved for the provision for a Minister of that Church." *Q. 319 A., pp. 234-236.* For a further opinion on this case see *below pp 203-205, 293-294.*

IMPERIAL ADMINISTRATION.

Letter from Gordon[1] and Memorandum, 30 March, 1819.[2]

Downing Street
30 March 1819.

Sir,

I have the honor to inclose a Memorandum upon the subject of a Bill passed by the Legislature of the Province of Lower Canada for Establishing a Bank at Montreal, and which is now before the Committee of Privy Council for confirmation or disallowance.

If there appears nothing objectionable in the course I have ventured to suggest for giving early operation to this Bill in case any alteration should be deemed adviseable by His Majesty's Government,

I trust the measure may be recommended to the consideration of the Committee of Council.

I have the Honor to be
Sir
Your most Obed[t] Serv[t]

ADAM GORDON

H. Goulburn Esq[r]

Memorandum

30 March 1819.

A Bill has been passed in Lower Canada for Establishing a Bank of Montreal which is reserved for the signification of the Royal pleasure.

M[r] Stephen has reported that there is no objection to the Bill in point of Law, but has pointed out some alterations which he conceives may be advantageously made in it.

The Bill has been some time under consideration, and a general wish prevails in the Province that no time should be lost in bringing it into operation—M[r] Gordon, as Agent for the Province has in consequence been instructed to take any measures which may tend to that Object.

He therefore begs leave to suggest that if the general provisions of the Bill should appear unobjectionable altho' any or all the Amendments suggested by M[r] Stephen should be thought proper to be adopted, that such a Communication may be made to the Governor upon the subject, as will enable him to give his Assent to any Bill so amended, in order that it may have immediate operation in the Province without incurring the delay of another reference to this Country for confirmation.

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[1] Adam Gordon, a clerk in the Colonial Office and the Agent appointed by the Executive to look after the interests of Lower Canada. This document illustrates the type of work which he was expected to do.

[2] *Q. 154, pp. 59-61.*

Decision of the Privy Council, 1819.[1]

Office of Committee of Privy
Council for Trade.
Whitehall 18th May 1819.

Sir,

The Lords of the Committee of Privy Council for Trade and Plantations having had under Consideration the Bill (N° 327) Intituled, "An Act for the Establishment of a Bank at the City of Montreal in the Province of Lower Canada." This Bill was transmitted with a Letter from Earl Bathurst to the Lord President of the Council on the 30th Septr last, and has since been referred to Their Lordships by An Order of The Prince Regent in Council.

Their Lordships have likewise had under Consideration the report of Mr Stephen[2] on the said Bill, And I have it in Command to Acquaint you, for the information of Earl Bathurst, that The Lords of the Committee are of opinion that the Governor may be instructed to assent to the said Bill provided the several Amendments suggested by Mr Stephen are therein inserted, excepting the one which relates to the provision of the Bill, contained in the 6th General Rule for the Management of the Affairs of the Company, as it does not appear to their Lordships to be of any moment

I am
Sir,
Your Most Obedt
humble Servant

THOMAS: LACK.

Henry Goulburn Esqr
&c &c

Order from The Admiralty Office, 1819.[3]

Admiralty Office
3. July. 1819.

Sir,

The Navy Board having on the 21st April last entered into a Contract to be completed by the 25th March 1821, with Messrs Usborne, Benson & Co for the supply of Canada Goods in which it is stipulated that No Yard Mast, or Bowsprit cut in His Majesty's Colonies in North America shall be delivered but such as shall have been cut by Licence from His Majesty's Surveyor General of the Woods in North America, & also, if it should be required under the inspection of his Officers. And that the Articles are to be of the growth of Canada, &

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[1] *Q. 154, pp. 88-89.* This document illustrates the Imperial supervision of Colonial legislation.

[2] James Stephen, later Sir James Stephen (1789-1859). At this time Stephen was permanent counsel for the Colonial Office. In 1834 he became Assistant Under-Secretary of State for the colonies. Two years later he was promoted to Secretary of State. His influence was thought to be so great that his enemies referred to him as "King Stephen" or "Mr. Over-secretary Stephen." He was also known as "Mr. Mother-Country."

[3] *Q. 154, p. 6.* This document has been selected as a representative example of the Imperial governmental system.

felled above Montreal; I am commanded by my Lords Commissioners of the Admiralty to request that you will move Lord Bathurst to issue the requisite Licences to the Surveyor General to enable the parties to perform the said Contract.

I am, Sir,
Your very humble Servant

J. W. CROKER

H. GOULBURN Esq[r]

ADMINISTRATOR FOR UPPER CANADA.

GOVERNMENT HOUSE March 8[th] 1820.[1]

SIR

I am to Communicate to you, for the information of The Honorable Executive Council, that His Excellency The Lieutenant Governor, and Major General Commanding, left this Seat of Government this morning for Lower Canada,[2] and will remain absent for a Period during which it will be necessary to provide for the Administration of the Government of the Province—

I have the honor to be
&c &c

(Signed) GEORGE HILLIER

To
JOHN SMALL Esquire
Clerk Executive Council

The Honorable Lieu[t] Colonel Smith took the usual Oaths and was Sworn as Administrator of the Government of the Province, during the absence of His Excellency The Lieutenant Governor.

EXTENSION OF CIVIL JURISDICTION.

(Organization of Western Territory)

By His Royal Highness the PRINCE OF WALES, Regent of the United Kingdom of Great Britain and Ireland, in the name and on the behalf of His Majesty.

A PROCLAMATION[3]

J. C. SHERBROOKE.

WHEREAS by an Act of the Parliament of the United Kingdom of Great Britain and Ireland, passed in the forty-third year of His Majesty's reign, intituled, " An Act for extending the jurisdiction of the Courts of Justice in the Provinces of Lower and Upper-Canada, to the trial and punishment of persons

[1] *Upper Canada, State Book, G., pp. 87-88.*
[2] To assume the government of that Province until such time as Lord Dalhousie should be able to leave Nova Scotia. Sir Peregrine Maitland resumed the Government of Upper Canada, 30 June, 1820.
[3] *Quebec Gazette, 18 May, 1820.*

guilty of crimes and offences within certain parts of North America, adjoining to the said Provinces," it is amongst other things enacted, " That all offences committed within any of the Indian Territories, or parts of America, not within the limits of either of the said Provinces, or of any Civil Government of the United States of America, shall be and be deemed to be offences of the same nature, and shall be tried in the same manner, and be subject to the same punishment, as if the same had been committed within the said Provinces of Lower or Upper-Canada."

And whereas by the said Act it is also enacted, " That it shall be lawful for the Governor, or Lieutenant Governor, or person administering the Government for the time being, of the Province of Lower-Canada, by Commission under his Hand and Seal, to authorize and empower any person or persons, whresoever resident or being at the time, to act as Civil Magistrates and Justices of the Peace for any of the Indian Territories, or parts of America, not within the limits of either of the said Provinces, or of any Civil Government of the United States of America, as well as within the limits of either of the said Provinces, either upon information taken or given within the said Provinces of Lower or Upper-Canada, or out of the said Provinces in any part of the Indian Territories, or parts of America aforesaid, for the purpose only of hearing crimes and offences, and committing any person or persons, guilty of any crime or offence, to safe custody, in order to his or their being conveyed to the said Province of Lower-Canada, to be dealt with according to Law;" and "That it shall be lawful for any person or persons whatever, to apprehend and take before any persons so commissioned as aforesaid, or to apprehend and convey, or cause to be safely conveyed with all convenient speed, to the Province of Lower-Canada, any person or persons guilty of any crime or offence, there to be delivered into safe custody, for the purpose of being dealt with according to Law."

And whereas by the said Act it is also further enacted, "That every such offender may and shall be prosecuted and tried in His Majesty's Courts of the Province of Lower-Canada, in which crimes and offences of the like nature are usually tried, and where the same would have been tried if such crime or offence had been committed within the limits of the Province where the same shall be tried under the said Act; That every offender tried and convicted under the said Act, shall be liable and subject to such punishment as may by any Law in force in the Province where he or she shall be tried, be inflicted for such crime or offence, and that such Court may and shall proceed to trial, judgment and execution, or other punishment, for such crime or offence, in the same manner, in every respect, as if such crime or offence had been really committed within the jurisdiction of such Court; and to proceed also in the trial of any person being a subject of His Majesty, who shall be charged with any offence, notwithstanding such offence shall appear to have been committed within the limits of any Colony, Settlement or Territory, belonging to any European State."

And whereas divers breaches of the peace, and acts of force and violence, have lately been committed within the said Indian Territories and parts of America, mentioned and described in the said Act of Parliament, which have arisen from contentions between certain Merchants, carrying on trade and com-

merce in the said Indian Territories, under the names of the Hudson's Bay Company, and North West Company, respectively, and other persons, their servants, agents, or adherents, of whom some have entered into and seized, and occupied by force, and with strong hand, lands or possessions, therein taking, and by force retaining, divers goods, wares, merchandize, and other property, and obstructing the passage of navigable rivers and other natural passes of the country; and others have met together in unlawful assemblies, formed divers conspiracies and confederacies, committed murders, riots, routs and affrays, and appeared, gone and ridden in companies, in military array, with armed force, and have rescued themselves and others from lawful arrest and custody.

We do, therefore, in the name and on the behalf of His Majesty, publish this Proclamation, hereby calling upon the said Merchants, so as aforesaid carrying on trade and commerce in the said Indian Territories, under the names of the Hudson's Bay Company, and the North West Company, respectively, and upon each and every of them, and upon all other persons, their servants, agents or adherents, and each and every of them, to desist from every hostile aggression or attack whatsoever: And in order to prevent the further employment of an unauthorised military force, we do hereby require all persons who have been heretofore engaged in His Majesty's service as Officers or Soldiers, and as such have enlisted and engaged in the service of the said Hudson's Bay Company, or North West Company, or either of them, or of any of their servants, agents, or adherents, to leave the service in which they may be so engaged, within twenty-four hours after their knowledge of this Proclamation, under penalty of incurring our most severe displeasure, and forfeiting every privilege to which their former employment in His Majesty's service would otherwise have entitled them.

And we do, under similar penalties, hereby require of all and every person and persons whomsoever, whom it doth or shall, or may in any wise concern, the restitution of all Forts, Buildings, or Trading Stations, with the property which they contain, which may have been seized or taken possession of, by either party, to the party who originally established or constructed the same, and were possessed thereof previous to the recent disputes between the aforesaid Companies.

And we do hereby require in like manner, of all and every person and persons whomsoever, whom it doth, or shall, or may in any wise concern, the removal of any blockade or impediment, by which any party, person or persons may have attempted to prevent, or interrupt the free passage of Traders, or others of His Majesty's subjects, or of the natives of the said Indian Territories, with their merchandize, furs, provisions, and other effects, throughout the Lakes, Rivers, Roads, and every other usual route or communication heretofore used for the purposes of the Fur Trade, in the interior of North America; and full and free permission for all persons to pursue their usual and accustomed trade, without hindrance or molestation, hereby declaring, that nothing done in consequence of this Proclamation, shall in any degree be considered to affect the rights which may ultimately be adjudged to belong to either or any party, upon a full consideration of all the circumstances of their several claims.

And whereas for the purpose of restraining all offences in the said Indian Territories, and of bringing to condign punishment the perpetrators of all offences

there committed, His Excellency Sir JOHN COAPE SHERBROOKE, Knight Grand Cross of the Most Honorable Military Order of the Bath, His Majesty's Captain General and Governor in Chief in and over the Provinces of Lower and Upper-Canada, Nova Scotia, New Brunswick, and their several dependancies, Lieutenant General and Commander of all His Majesty's Forces in the said Provinces, &c. &c. by and with the advice of His Majesty's Executive Council of and for the said Province of Lower-Canada, hath nominated, constituted, and authorized the Honourable WILLIAM BACHELER COLTMAN, one of the Members of the said Council, a Lieutenant Colonel in His Majesty's Indian Department, and one of His Majesty's Justices of the Peace for the Western District of the said Province of Upper-Canada; and JOHN FLETCHER, Esquire Barrister at Law, one of the principal Police Magistrates and Chairman of His Majesty's Court of Quarter Session for the District of Quebec, a Major in the said Indian Department, and one of His Majesty's Justices of the Peace for the said Western District of Upper-Canada, to act as Civil Magistrates and Justices of the Peace for the said Indian Territories or parts of America aforesaid, as well without as within the said Provinces of Lower and Upper-Canada, under and by virtue of the said Act, and also His Majesty's Special Commissioners for inquiring into and investigating all offences committed in the said Indian Territories, and the circumstances attending the same, with power and authority for such purposes.

And whereas the said William Bacheler Coltman, and John Flether, [sic] are immediately about to proceed to the said Indian Territories, in execution of the trust so reposed in them:

We do therefore hereby strictly charge and command, in the name and on the behalf of His Majesty, all Sheriffs, Bailiffs, Constables and other Officers of the Peace, and all others, His Majesty's Officers, Servants and Subjects, Civil and Military, generally, in their several and respective stations, to make diligent inquiry and search to discover and apprehend all persons who have been or shall be guilty of any such crimes or offences as aforesaid, or any other crimes or offences whatsoever, within the Indian Territories or parts of America, in the said Act mentioned and described, whether without or within the said Provinces of Lower or Upper-Canada, and to cause them to be carried before the said *William Bacheler Coltman* and *John Fletcher*, or one of them, or such other Magistrates as may hereafter be appointed for the like purposes, or otherwise be invested with competent jurisdiction in that behalf, to be dealt with according to Law, and by all lawful ways and means whatsoever, to repress and discourage all such crimes and offences; requiring and directing them and each of them as well within the said Indian Territories or parts of America, as elsewhere, to be aiding and assisting to the said *William Bacheler Coltman*, and *John Fletcher*, in the execution of the duties wherewith they are charged as such Magistrates and Special Commissioners as aforesaid, in all their endeavours for the repression and discouragement of all such crimes and offences, wheresoever or by whomsoever perpetrated or committed; for the detection and apprehension of all such persons as have been or hereafter shall be concerned or implicated in the perpetration thereof, and for the maintenance and preservation of the Peace and of the Law.

In faith and testimony whereof, We, by our express command, in the name and on the behalf of His Majesty, have caused the Great Seal of the Province of Lower-Canada, to be hereunto affixed.

Witness our trusty and well-beloved Sir John Coape Sherbrooke, Knight Grand Cross of the Most Honourable Military Order of the Bath, Captain General and Governor in Chief of the said Provinces of Lower and Upper Canada, Nova Scotia and New Brunswick, Lieutenant General and Commander of all His Majesty's Forces in the said Provinces, &c. &c. at the Castle of St. Lewis, in the City of Quebec, in the said Province of Lower-Canada, this third day of May, in the year of our Lord Christ, one thousand eight hundred and seventeen, and in the fifty-seventh year of His Majesty's Reign.

J.C.S.

By His Excellency's Command,
John Taylor, Dep. Sec'y.

Province of Lower Canada } Signed P. Maitland.

By His Majesty George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith:

A Proclamation.

Whereas divers breaches of the peace and acts of force and violence having been committed within those parts of the Continent of North America, commonly called and known by the name of the Indian Territories:—We, for the suppression and prevention of all such breaches of the peace and acts of force and violence, in the name and on the behalf of Our late Royal Father, of glorious memory, did issue Our Royal Proclamation under the Great Seal of our Province of Lower Canada, bearing date the third day of May, in the fifty-seventh year of the Reign of Our said Royal Father. And whereas it appears to Us expedient so to do, We have thought fit to renew, and hereby do renew the prohibitions, commands, and provisions in Our said Proclamation contained, and each and every of them as fully to all intents and purposes as if the same were herein again set forth and repeated; hereby calling upon all persons carrying on trade and commerce in the said Indian Territories, under the names of the Hudson's Bay Company and the North-West Company, respectively, and upon each and every of them, and upon all other persons, their servants, agents or adherents, and generally all persons whomsoever, and each and every of them, to desist from every hostile aggression or attack, and from every act of force and violence, or trespass whatsoever.

And we do hereby further strictly warn all parties that any infringement of Our former Proclamation, or of this Our present Proclamation, whether by seizing the property or persons of the traders, by obstructing the rivers and portages by which their trade is carried on, or by any incitement of the Indians or others to acts of violence or hostility, or by any other manner whatsoever,

will not fail to be visited with Our severest displeasure, and to draw down upon the parties themselves and the persons under whose authority they act, the heaviest penalties.

In faith and testimony whereof We have caused the Great Seal of Our Province of Lower-Canada to be hereunto affixed: Witness Our trusty and well-beloved Sir Peregrine Maitland, Knight, Commander of the Most Honorable Military Order of the Bath, Major-General Commanding Our Forces in Our Provinces of Upper and Lower-Canada, President and Administrator of the Government of Our said Province of Lower-Canada, at Our Castle of St. Lewis, in Our City of Quebec, in Our said Province, this twelfth day of May, in the year of Our Lord one thousand eight hundred and twenty, and in the first year of Our Reign.

(Signed) J. Ready, Actg. Prov. Secy. (Signed) P.M.

Imperial Statutes, 1 & 2 Geo. IV, Cap. LXVI.[1]

An Act for regulating the Fur Trade, and establishing a Criminal and Civil Jurisdiction within certain Parts of *North America.*

[2nd *July* 1821.]

'Whereas the Competition in the Fur Trade between the Gov-
'ernor and Company of Adventurers of *England* trading into *Hud-*
'*son's Bay,* and certain Associations of Persons trading under the
'Name of "The North West Company of *Montreal,*" has been found
'for some Years past to be productive of great Inconvenience and
'Loss, not only to the said Company and Associations, but to the
'said Trade in general, and also of great Injury to the native
'*Indians,* and of other Persons Subjects of His Majesty: And Whereas
'the Animosities and Feuds, arising from such Competition, have
'also for some Years past kept the Interior of *America,* to the North-
'ward and Westward of the Provinces of *Upper* and *Lower Canada,*
'and of the Territories of the United States of *America,* in a State
'of continued Disturbance: And Whereas many Breaches of the
'Peace, and Violence extending to the Loss of Lives, and consider-
'able Destruction of Property, have continually occurred therein:
'And Whereas, for Remedy of such Evils, it is expedient and neces-
'sary that some more effectual Regulations should be established for
43 G. 3. c. 138. 'the apprehending, securing and bringing to Justice all Persons com-
'mitting such Offences, and that His Majesty should be empowered
'to regulate the said Trade: And Whereas Doubts have been enter-
'tained, whether the Provisions of an Act passed in the Forty third
'Year of the Reign of His late Majesty King *George* the Third,
'intituled *An Act for extending the Jurisdiction of the Courts of*
'*Justice in the Provinces of* Lower *and* Upper Canada, *to the Trial*
'*and Punishment of Persons guilty of Crimes and Offences within*
'*certain Parts of* North America *adjoining to the said Provinces,* ex-

[1] *Statutes at Large, Great Britain, 60 Geo. III-3 Geo. IV, pp. 422-424.* This Act was sent out with a covering despatch of 12, Feb., 1822. *G. 12, pp. 6-7.*

'tended to the Territories granted by Charter to the said Governor 'and Company; and it is expedient that such Doubts should be re-'moved, and that the said Act should be further extended:' Be it

His Majesty may make Grants for exclusive Trade with Indians in certain Parts of North America.

therefore enacted by The King's Most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, it shall be lawful for His Majesty, His Heirs or Successors, to make Grants or give His Royal Licence, under the Hand and Seal of One of His Majesty's Principal Secretaries of State, to any Body Corporate, or Company, or Person or Persons, of or for the exclusive Privilege of Trading with the *Indians* in all such Parts of *North America* as shall be specified in any such Grants or Licences respectively, not being Part of the Lands or Territories heretofore granted to the said Governor and Company of Adventurers of *England* trading to *Hudson's Bay*, and not being Part of any of His Majesty's Provinces in *North America*, or of any Lands or Territories belonging to the United States of *America;* and all such Grants and Licences shall be good, valid and effectual for the Purpose of securing to all such Bodies Corporate, or Companies, or Persons, the sole and exclusive Privilege of trading with the *Indians* in all such Parts of *North America* (except as hereinafter excepted), as shall be specified in such Grants or Licences; any thing contained in any Act or Acts of Parliament, or any Law to the contrary notwithstanding.

For what Periods such Grants may be made.

II. Provided always, and be it further enacted, That no such Grant or Licence, made or given by His Majesty, His Heirs or Successors, of any such exclusive Privileges of trading with the *Indians* in such Parts of *North America* as aforesaid, shall be made or given for any longer Period than Twenty one Years; and no Rent shall be required or demanded for or in respect of any such Grant or Licence, or any Privileges given thereby under the Provisions of this Act, for the first Period of Twenty one Years; and from and after

Reservation of Rents.

the Expiration of such first Period of Twenty one Years, it shall be lawful for His Majesty, His Heirs or Successors, to reserve such Rents in any future Grants or Licences to be made to the same or any other Parties, as shall be deemed just and reasonable, with security for the Payment thereof; and such Rents shall be deemed Part of the Land Revenues of His Majesty, His Heirs and Successors, and be applied and accounted for as the other Land Revenues of His Majesty, His Heirs or Successors, shall, at the time of Payment of any such Rent being made, be applied and accounted for.

Persons to whom such Grants made, to enter into Security,

III. And be it further enacted, That from and after the passing of this Act, the Governor and Company of Adventurers trading to *Hudson's Bay*, and every Body Corporate and Company and Person to whom every such Grant or Licence shall be made or given as aforesaid, shall respectively keep accurate Registers of all Persons in

their Employ in any Parts of *North America*, and shall, once in each Year, return to His Majesty's Secretaries of State, accurate Duplicates of such Registers, and shall also enter into such Security as shall be required by His Majesty for the due Execution of all Processes criminal and civil, as well within the Territories included in any such Grant, as within those granted by Charter to the Governor and Company of Adventurers trading to *Hudson's Bay*, and for the producing or delivering into safe Custody, for Purpose of Trial, of all Persons in their Employ or acting under their Authority, who shall be charged with any Criminal Offence, and also for the due and faithful Observance of all such Rules, Regulations and Stipulations as shall be contained in any such Grant or Licence, either for diminishing or preventing the Sale or Distribution of Spirituous Liquors to the *Indians*, or for promoting their moral and religious Improvement, or for any other Object which His Majesty may deem necessary for the Remedy or Prevention of the other Evils which have hitherto been found to exist.

for the Purposes herein mentioned.

'IV. And Whereas by a Convention entered into between His 'Majesty and the United States of *America*, it was stipulated and 'agreed, that any Country on the North West Coast of *America*, to 'the Westward of the *Stony Mountains*, should be free and open to 'the Citizens and Subjects of the Two Powers, for the Term of Ten 'Years from the Date of the Signature of that Convention;' Be it therefore enacted, That nothing in this Act contained shall be deemed or construed to authorize any Body Corporate, Company or Person, to whom His Majesty may have, under the Provisions of this Act, made a Grant or given a Licence of exclusive Trade with the *Indians* in such Parts of *North America* as aforesaid, to claim or exercise any such exclusive Trade within the Limits specified in the said Article, to the Prejudice or Exclusion of any Citizens of the said United States of *America*, who may be engaged in the said Trade: Provided always, that no *British* Subject shall trade with the *Indians* within such Limits, without such Grant or Licence as is by this Act required.

Such Grants not to interfere with Trade of United States Westward of the Stony Mountains.

Proviso.

V. And be it declared and enacted, That the said Act passed in the Forty third Year of the Reign of His late Majesty, intituled *An Act for extending the Jurisdiction of the Courts of Justices in the Provinces of* Lower *and* Upper Canada, *to the Trial and Punishment of Persons guilty of Crimes and Offences within certain Parts of* North America *adjoining to the said Provinces*, and all the Clauses and Provisoes therein contained, shall be deemed and construed, and it is and are hereby respectively declared, to extend to and over, and to be in full force in and through all the Territories heretofore granted to the Company of Adventurers of *England* trading to *Hudson's Bay;* any thing in any Act or Acts of Parliament, or this Act, or in any Grant or Charter to the Company, to the contrary notwithstanding.

43 G. 3. c. 138, extended to Territories granted to Hudson's Bay Company.

Courts of Judicature established in Upper Canada to take Cognizance of Causes in Indian Territories.

VI. And be it further enacted, That from and after the passing of this Act, the Courts of Judicature now existing, or which may be hereafter established in the Province of *Upper Canada,* shall have the same Civil Jurisdiction, Power and Authority, as well in the Cognizance of Suits, as in the issuing Process, mesne and final, and in all other Respects whatsoever, within the said *Indian* Territories, and other Parts of *America* not within the Limits of either of the Provinces of *Lower* or *Upper Canada,* or of any Civil Government of the United States, as the said Courts have or are invested with within the Limits of the said Provinces of *Lower* or *Upper Canada* respectively; and that all and every Contract, Agreement, Debt, Liability and Demand whatsoever, made, entered into, incurred or arising within the said *Indian* Territories and other Parts of *America,* and all and every Wrong and Injury to the Person or to Property, real or personal, committed or done within the same, shall be and be deemed to be of the same Nature, and be cognizable by the same Courts, Magistrates or Justices of the Peace, and be tried in the same Manner and subject to the same Consequences, in all Respects, as if the same had been made, entered into, incurred, arisen, committed or done within the said Province of *Upper Canada;* any thing in any Act or Acts of Parliament, or Grant or Charter, to the contrary notwithstanding: Provided always, that all such Suits and Actions relating to Lands, or to any Claims in respect of Land, not being within the Province of *Upper Canada,* shall be decided according to the Laws of that Part of the United Kingdom called *England,* and shall not be subject to or affected by any Local Acts, Statutes or Laws of the Legislature of *Upper Canada.*

Actions relating to Lands not within Upper Canada decided according to Law of England.

Proceedings of Courts issued as heretofore.

VII. And be it further enacted, That all Process, Writs, Orders, Judgments, Decrees and Acts whatsoever, to be issued, made, delivered, given and done by or under the Authority of the said Courts, or either of them, shall have the same Force, Authority and Effect within the said *Indian* Territory and other Parts of *America* as aforesaid, as the same now have within the said Province of *Upper Canada.*

Justices of Peace authorized by Governor, &c. to act as Commissioners for executing Process, &c.

VIII. And be it further enacted, That it shall be lawful for the Governor or Lieutenant Governor or Person administering the Government for the time being of *Lower Canada,* by Commission under his Hand and Seal, to authorize all Persons who shall be appointed Justices of the Peace under the Provisions of this Act, within the said *Indian* Territories, or other Parts of *America* as aforesaid, or any other Person who shall be specially named in any such Commission, to act as a Commissioner within the same, for the Purpose of executing, enforcing and carrying into Effect all such Process, Writs, Orders, Judgments, Decrees and Acts, which shall be issued, made, delivered, given or done by the said Courts of Judicature, and which may require to be enforced and executed within the said *Indian*

Territories or such other Parts of *North America* as aforesaid; and in case any Person or Persons whatsoever residing or being within the said *Indian* Territories, or such other Parts of *America* as aforesaid, shall refuse to obey or perform any such Process, Writ, Order, Judgment, Decree or Act of the said Courts, or shall resist or oppose the Execution thereof, it shall and may be lawful for the said Justices of the Peace or Commissioners, and they or any of them are and is hereby required, on the same being proved before him, by the Oath or Affidavit of One credible Witness, to commit the said Person or Persons so offending as aforesaid to Custody, in order to his or their being conveyed to *Upper Canada;* and that it shall be lawful for any Justice of the Peace or Commissioner, or any Person or Persons acting under his Authority, to convey or cause to be conveyed such Person or Persons so offending as aforesaid to *Upper Canada,* in pursuance of such Process, Writ, Order, Decree, Judgment or Act, and such Person and Persons shall be committed to Gaol by the said Court, on his, her or their being so brought into the said Province of *Upper Canada,* by which such Process, Writ, Order, Decree, Judgment or Act was isued, made, delivered, given or done, until a final Judgment or Decree shall have been pronounced in such Suit, and shall have been duly performed, and all Costs paid, in case such Person or Persons shall be a Party or Parties in such Suit, or until the Trial of such Suit shall have been concluded, in case such Person or Persons shall be a Witness or Witnesses therein: Provided always, that if any Person or Persons so apprehended as aforesaid shall enter into a Bond Recognizance to any such Justice of the Peace or Commissioner, with Two sufficient Sureties, to the Satisfaction of such Justice of the Peace or Commissioner, or the said Courts, conditioned to obey and perform such Process, Writ, Order, Judgment, Decree or Act as aforesaid, then and in such case it shall and may be lawful for the said Justice of the Peace or Commissioner, or the said Courts, to discharge such Person or Persons out of Custody.

Persons residing in Indian Territories refusing to obey Process.

Committed and conveyed to Upper Canada.

Costs.

Proviso for Recognizance.

IX. And be it further enacted, That in case such Person or Persons shall not perform and fulfil the Condition or Conditions of such Recognizance, then and in such case it shall and may be lawfu for any such Justice or Commissioner, and he is hereby required, to assign such Recognizance to the Plaintiff or Plaintiffs, in any Suit in which such Process, Writ, Order, Decree, Judgment or Act shall have been issued, made, delivered, given or done, who may maintain an Action in the said Courts in his own Name against the said Sureties, and recover against such Sureties the full Amount of such Loss or Damage as such Plaintiff shall prove to have been sustained by him, by reason of the original Cause of Action in respect of which such Process, Writ, Order, Decree, Judgment or Act of the said Courts

Such Recognizance may be assigned,

notwithstanding Charter to Hudson's Bay Company.

were issued, made, delivered, given or done as aforesaid, notwithstanding any thing contained in any Charter granted to the said Governor and Company of Adventurers of *England* trading to *Hudson's Bay*.

Appointment by His Majesty of Justices of Peace to determine Causes.

X. And be it further enacted, That it shall be lawful for His Majesty, if He shall deem it convenient so to do, to issue a Commission or Commissions to any Person or Persons to be and act as Justices of the Peace within such Parts of *America* as aforesaid, as well within any Territories heretofore granted to the Company of Adventurers of *England* trading to *Hudson's Bay*, as within the *Indian* Territories of such other Parts of *America* as aforesaid; and it shall be lawful for the Court in the Province of *Upper Canada*, in any case in which it shall appear expedient to have any Evidence taken by Commission, or any Facts or Issue, or any Cause or Suit ascertained, to issue a Commission to any Three or more of such Justices to take such Evidence, and return the same, or try such Issue, and for that Purpose to hold Courts, and to issue Subpoenas or other Processes to compel Attendance of Plaintiffs, Defendants, Jurors, Witnesses and all other Persons requisite and essential to the Execution of the several Purposes for which such Commission or Commissions had issued, and with the like Power and Authority as are vested in the Courts of the said Province of *Upper Canada;* and any Order, Verdict, Judgment or Decree that shall be made, found, declared or published by or before any Court or Courts held under and by virtue of such Commission or Commissions, shall be considered to be of as full Effect, and enforced in like Manner, as if the same had been made, found, declared or published within the Jurisdiction of the Court of the said Province; and at the Time of issuing such Commission or Commissions shall be declared the Place or Places where such Commission is to be opened, and the Courts and Proceedings thereunder held; and it shall be at the same time provided how and by what Means the Expences of such Commission, and the Execution thereof, shall be raised and provided for.

Effect of such Decree, &c.

His Majesty may issue Commissions under Great Seal, empowering Justices to hold Courts of Record for Trial of Criminal and Civil Offences.

XI. And be it further enacted, That it shall be lawful for His Majesty, notwithstanding any thing contained in this Act, or in any Charter granted to the said Governor and Company of Adventurers of *England* trading to *Hudson's Bay*, from time to time, by any Commission under the Great Seal, to authorize and empower any such Persons so appointed Justices of the Peace as aforesaid, to sit and hold Courts of Record for the Trial of Criminal Offences and Misdemeanors, and also of Civil Causes; and it shall be lawful for His Majesty to order, direct and authorize the Appointment of proper Officers to act in aid of such Courts and Justices within the Jurisdiction assigned to such Courts and Justices in any such Commission;

any thing in this Act, or in any Charter of the Governor and Company of Merchant Adventurers of *England* trading to *Hudson's Bay*, to the contrary notwithstanding.[1]

Such Courts constituted as His Majesty shall direct. Power of Court not to extend to Capital Offences; nor to Civil Actions where the Amount in Issue exceeds 200£.

XII. Provided always, and be it further enacted, That such Courts shall be constituted, as to the Number of Justices to preside therein, and as to such Places within the said Territories of the said Company, or any *Indian* Territories, or other Parts of *North America* as aforesaid, and the Times and Manner of holding the same, as His Majesty shall from time to time order and direct; but shall not try any Offender upon any Charge or Indictment for any Felony made the Subject of Capital Punishment, or for any Offence or passing Sentence affecting the Life of any Offender, or adjudge or cause any Offender to suffer Capital Punishment or Transportation, or take Cognizance of or try any Civil Action or Suit, in which the Cause of such Suit or Action shall exceed in Value the Amount or Sum of Two hundred Pounds; and in every case of any Offence subjecting the Person committing the same to Capital Punishment or Transportation, the Court or any Judge of any such Court, or any Justice or Justices of the Peace, before whom any such Offender shall be brought, shall commit such Offender to safe Custody, and cause such Offender to be sent in such Custody for Trial in the Court of the Province of *Upper Canada*.

Appeal.

XIII. And be it further enacted, That all Judgments given in any Civil Suit shall be subject to Appeal to His Majesty in Council, in like manner as in other cases in His Majesty's Province of *Upper Canada*, and also in any case in which the Right or Title to any Land shall be in question.

Proviso for Hudson's Bay Company.

XIV. And be it further enacted, That nothing in this Act contained shall be taken or construed to affect any Right, Privilege, Authority or Jurisdiction which the Governor and Company of Adventurers trading to *Hudson's Bay* are by Law entitled to claim and exercise under their Charter; but that all such Rights, Privileges, Authorities and Jurisdictions shall remain in as full force, virtue and effect, as if this Act had never been made; any thing in this Act to the contrary notwithstanding.

[1] By the Charter of 1670, the Hudson's Bay Company had been given jurisdiction over all persons within their Territories, with power to make Laws and Ordinances conformable to those of England and to impose reasonable fines and penalties. The above mentioned Act of 1803, however, extended the jurisdiction of the Courts of Upper and Lower Canada, and it was ordered that offences committed "within any of the Indian Territories, or Parts of *America* not within the Limits of either of the said Provinces of *Lower* or *Upper Canada*, or of any Civil Government of the United States of America, shall be and be deemed to be offences of the same nature, and shall be tried in the same Manner and subject to the same Punishment, as if the same had been committed within the Provinces of *Lower* or *Upper Canada*". Such offences were to be tried in the Courts of Lower Canada or, if the Governor should see fit, in those of Upper Canada. Compare with paragraph *XIV*.

POWERS OF ADMINISTRATOR.

BATHURST TO DAHOUSIE.[1]

Downing Street 20 Jan 1820

MY LORD,

I have the Honor to transmit to you three dispatches which I have received from the Administrator of the Province of Lower Canada[2] relative to the Vacancies which have taken place in the Executive and Legislative Councils of the Province and containing his opinion of the Character and qualifications of the persons whom he would recommend as Councillors— Deeming it in all cases, and more especially in that of Canada, most important that the selection of Members of Council should rest altogether with the Governor[3] I have forborne to submit M[r] Monk's recommendation to The Prince Regent nor shall I take any measures on the subject beyond communicating to Your Lordship the information which M[r] Monk's letters afford until I shall be favoured with Your Lordships opinion as to the Gentlemen best qualified and possessing the strongest claims to succeed to the vacant situations.

I have the Honor to be
My Lord,
Your Lordship's most obedient
Humble Servant

BATHURST

Lieut General
The EARL OF DALHOUSIE G.C.B.

PROCEEDINGS ON THE DEATH OF GEORGE III, 1820.

By the King.

A PROCLAMATION,[4]

Requiring all Persons being in Office of Authority or Government at the Decease of the late King, to proceed in the Execution of their respective Offices.
George R.

WHEREAS by an Act made in the Sixth Year of the Reign of Her late Majesty Queen *Anne,* intituled, *An Act for the Security of Her Majesty's Person and Government, and of the Succession to the Crown of* Great Britain, *in the Protestant Line;* it was enacted, that no Office, Place, or Employment, Civil or Military, within the Kingdoms of *Great Britain* or *Ireland,* Dominion of *Wales,* Town of *Berwick-upon-Tweed,* Isles of *Jersey, Guernsey, Alderney* and *Sark,*

[1] *G. 11, pp. 1-2.*
[2] Hon. James Monk, following the death of the Duke of Richmond.
[3] Lord Dalhousie also felt that the Administrator should not have the power to make such recommendations. When he heard of Monk's action, he wrote to Colonel Ready, the Civil Secretary at Quebec: "As to the three others recommended by the President I must say it was hasty—it is an object of the greatest importance to the tranquil Government of the Province, that the Governor should have full confidence in the Members of the Executive, and Judge Monk ought in delicacy, to have left that choice to the Governor, who should be named by His Majesty. I don't suppose Lord Bathurst will confirm the choice without hearing from me; at the same time I am by no means disposed to think that the persons will be objectionable in any respect." *Dalhousie to Colonel Ready, Halifax, 22 January, 1820, Dalhousie Papers, Vol. 3.*
[4] *Quebec Gazette, 18 May, 1820.*

or any of His Majesty's Plantations, should become void by reason of the Demise of Her said late Majesty, Her Heirs or Successors, Kings or Queens of this Realm, but that every Person and Persons in any of the Offices, Places, and Employments aforesaid, should continue in their respective Offices, Places, and Employments for the space of Six Months next after such Death or Demise, unless sooner removed and discharged by the next Successor, to whom the Imperial Crown of this Realm was limited and appointed to go, remain, and descend: And whereas by an Act made in the Fifty-seventh Year of the Reign of His late Majesty King *George* the Third, intituled, *An Act for the Continuation of all and every Person or Persons in any and every Office, Place, or Employment, Civil or Military, within the United Kingdom of* Great Britain *and* Ireland, *Dominion of* Wales, *Town of* Berwick-upon-Tweed, *Isles of* Jersey, Guernsey, Alderney, Sark, *and* Man, *and also in all and every of His Majesty's Foreign Possessions, Colonies, or Plantations, which he or she shall hold, possess, or exercise during the Pleasure of the Crown at the Time of the Death or Demise of His present Majesty, until removed or discharged therefrom by the succeeding King or Queen of this Realm;* it was enacted, that all and every Person and Persons, who upon the Day of the Demise of His said late Majesty should hold any Office, Civil or Military, under the Crown during Pleasure, should under and by virtue of the said Act, and without any new or other Patent, Commission, Warrant, or Authority, continue and be entitled in all Respects, notwithstanding the Demise of His said Majesty, to hold and enjoy the same: But nevertheless the same should be held or enjoyed only during the Pleasure of the King or Queen who should succeed to the Crown upon the Demise of His said late Majesty; and the Right and Title to hold and enjoy the same under the Authority of the said Act, should be determinable in such and the like Manner by the King or Queen who upon the Demise of His said late Majesty should succeed to the Crown, as the Right or Title to any Office, Place, or Employment granted by such succeeding King or Queen, during Pleasure, would by Law be determinable: We, therefore, with the Advice of Our Privy Council, declare Our Royal Will and Pleasure to be, and do hereby direct and command, That all and every Person and Persons who at the Time of the Demise of Our late Royal Father, of Glorious Memory, duly and lawfully held, or were duly and lawfully possessed of or invested in any Office, Place, or Employment, Civil or Military, within Our United Kingdom of *Great Britain* and *Ireland,* Dominion of *Wales,* Town of *Berwick-upon-Tweed,* Isles of *Jersey, Guernsey, Alderney, Sark,* or *Man,* or any of Our Foreign Possessions, Colonies, or Plantations, do severally, according to their Places, Offices, or Charges, proceed in the Performance and Execution of all Duties belonging to their respective Offices, whilst they shall hold the same respectively during Our Pleasure; And We do hereby require and command all Our Subjects to be aiding, helping, and assisting at the Commandment of the said Officers and Ministers, in the Performance and Execution of their respective Offices and Places, as they and every of them tender Our utmost Displeasure, and will answer the contrary at their Peril.

Given at Our Court at Carlton House, *the Thirty-first Day of* January, *one thousand eight hundred and twenty, and in the First Year of Our Reign.*

God Save the King.

Communication for the Montreal Herald.[1]

Various opinions having been expressed, relative to the operation of the demise of our late beloved Sovereign Geo. III, upon the present election, and other matters of Provincial polity: I beg leave through the medium of your paper, to give the result of my enquiries into the subject.

1st. All Colonial Commissions continue for six months after the demise of the King, unless superseded in the mean time by his Successor, See 7 and 8 Wm. 3, chap. 27, explained by a subsequent stat. of 1. Q. Anne, chap. 8.—Also see 6 Anne, chap. 7, which continues the Commissions of Governors of Plantations for six months after the demise of the Queen, or her successors, and further, it is the invariable practice of every Successor, on the demise of the preceding Sovereign, to continue all Commissions for six months thereafter.

2d. All Acts of the Colonial Legislature, and other legal authority in a Colony: done before notice (of course official notice) of a demise of the Sovereign, are valid, on the principles of the common law applicable to such cases, and to the principles of sound sense; else upon every demise, a species of anarchy and dissolution of civil society, must ensue; because, otherwise, the exercise of power would be made dependant upon an impossibility, the knowledge of an event unattainable by any human means. The law expects no miracles.

If it be asked, why then were the Statutes of King William and Queen Anne passed? The answer is, it takes time after a Royal demise, to settle the arrangements of Government. The common law only supported all official acts done *before notice,* and therefore those Statutes in continuing all commissions for six months thus comprehend as well acts done *after* as *before notice,* during that period.

Upon the whole, the re-assembling of the old Parliament, where one does not exist at a Royal demise, applies only to Gt. Britain, and that by special Statute of 37 Geo. 3, chap. 127; whereas in the Colonies such is unnecessary from the foregoing provisions and principles.

And therefore there can be no doubt, that, supposing the Provincial Parliament meets, and proceeds to business upon the return of the late Writs of Election, every Act thereof assented to by the administrator, before the receipt of *official notice* of the demise of His late Majesty, would be valid to all intents and purposes. But it is of course competent to the Administrator, to prevent their meeting and proceeding to business, by prorogation, if he sees fit.

Montreal, March 20, 1820.

A.B.

Discussion by "An Elector".[2]

Sir,

The attention and curiosity of the public being directed to a point of considerable importance at this moment, the effect that the death of our venerable King will have on the elections now going on; I submit to you the following hasty suggestions on the subject, that you may if you think proper, insert them in your paper.

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[1] *Quebec Gazette, 27 March, 1820.*

[2] *Quebec Gazette, 23 March, 1820.* This question continued to be agitated until 1829 when it was set at rest by *9 Geo. IV Cap. 74.* The Governor reserved this act but the Royal Assent was proclaimed 18 January, 1831. This Act became effete upon the Union of the two Canadas but the situation was provided for by the Act *7 Vic. cap. 3* (1843).

The general rule of the Common Law of England undoubtedly is, that the King's death causes the dissolution of Parliament; the statutes of 7th and 8th Will. and 6th Anne, are exceptions to this rule, and only serve to prove it; for if the period of six months, (during which by these acts the Parliament existing at the King's death is continued) were allowed to expire without a new one being summoned, there can be no doubt that the old Parliament would then be at an end, and the preceding demise of the Crown would be the cause of its dissolution; but these acts, do not apply in this case; they were only made, as appears by the very terms of them, for the mother country, and contain no extending clause; except that of Queen Anne, which in its 8th section, provides for the continuance of the commissions of Colonial officers; nor are these acts part of *the law and usage of Parliament* as your Brother Editor supposes, but deviations from the general usage, rendered necessary by local circumstances.

As little can we avail ourselves of 37. Geo. 3. c. 127. (of which your brother Editor appears not to have been informed which points out the course to be pursued *in England* in the case of the demise of the Crown, subsequent to the dissolution or expiration of Parliament, and before the return day of the writs of summons.

There, the old Parliament would meet; but this too is a local law useless to us.

Recurring then, to the general rule, let us first see whether even that extends to us in the Colonies, and next, whether it is applicable to our case.

Every body knows that the common Law of England, as a body, is not in force here; but it may be said that so much of it as relates to Parliamentary institutions may be applied here, by analogy.

This is controverted on very high authority, but, admitting it, it may be doubted whether the analogy holds, whether the reason given for the dissolution of the English Parliament, on the demise of the Crown, exists in the Colonies; that reason (as stated in Sir Henry Vane's case) is *that the Parliament is called to consult with the person of the King who calls it.*

But here, though the form of the writ imports that our Parliament is called to consult with the King, the sense and the meaning of the thing, and the real truth is, that they are called to meet the person administering the Government, who by the Stat. of Anne is, and for six months will be as much the Representative of Geo: IV. as he was of the deceased monarch. Shall the letter of the writ be adhered to, rather than the reason and sense of it, *Qui haeret in literâ haeret in cortice*, says my Lord Coke.

And if the English Parliament had considered this Common Law principle to extend to the Colonies, must they not have seen that it might there produce the same evils as in England, (nay worse, because the remedy would not be at hand) and would they not have provided against it in the act of Anne, in which they evidently did not lose sight of the effects that the demise of the Crown might produce in the Colonies, and deemed it sufficient to provide that the Commissions of the Governors should be in force for six months after such an event. Is it not a forcible conclusion that they meant that all acts done under those commissions should be valid also.

But even if the Common Law principle extends to the Colonies, does it apply to the case existing here.

The assembly is dissolved by an officer holding a Commission, which gives him the authority to do so. The rule of Law is, that all acts done under a Commission, before notice of its revocation and determination are valid; this is a rule of common sense also, and therefore found equally binding in the French Law. Take the Governor in the light of a *mandatary*. "Quoique le mandat s'éteigne par la mort du mandant, néanmoins si le mandataire ignorant la mort du mandant avait, de bonne foi, fait l'affaire, les successeurs du mandant seroient obligés de ratifier ce qu'il a fait.—Poth: cont: de mandat. 106.

Again. "Pour que la *révocation* du mandat éteigne le mandat il faut que l'acte portant révocation, ou les faits qui la font présumer, soient parvenus, ou puissent être censés parvenus à la connoissance du mandataire.—Poth: 121. These quotations only apply as *raison écrites* but the English Law is in point and more applicable.

Under a Commission to examine witnesses the Commissioners began the examination *the day after* the King's demise, but before *notice* of it; the proceedings before notice were held to be good.

Cro: Car: 97.

An attachment sued out in the time of Charles II. and executed at Exeter three days *after* his death, but *before* notice was good.

1. Fern: 400.

Many other similar cases might be cited.

From these however we may safely draw the conclusion, that the proceedings of the Governor in the due execution of his Commission, *before notice* of its determination by the King's demise, would even *before* the Acts of William and Anne have been valid.

How much stronger is the argument made by the passing of these Acts.

The same reasoning will apply to the proceedings of the Returning Officers. If the act of dissolution and summoning a new Parliament, was valid, their appointments must be equally so; and on the principle that has been stated, their proceedings, until *notice given* of the determination of their powers, will be valid.

What notice will be sufficient? are we to be governed by a paragraph in an American newspaper, or in any newspaper. Here too the law furnishes a guide; a Commission is given to Judges of assize, and afterwards the King makes other Judges of assize; those first appointed are superseded on *notice* of the second Commission, but they are not bound to take notice of a Proclamation thereof in the country, *because the law has not provided* that such Proclamation should be made.—Bac: Abr: 99.

We may infer therefore that until notification of the King's death, published in a legal and formal manner—in a manner such "as the law provides;" the proceedings of the Returning Officers and all other proceedings in the King's name, are valid.

Much more might be said to prove the validity and legality of the late Elections; but perhaps I have already spent useless labour in proving what to some may seem to need no proof, the principle of the Common Law that the King's demise dissolves the Parliament, does not apply to the present case.

Much more, and more valuable reasoning on this subject may be found in Chalmers's opinion of Eminent Lawyers on points of Colonial Law, vol. 1, p. 238, 246, 312, &c. where the sentiments of men, evidently of no mean ability, are given on points nearly similar to that now under discussion.

I am Sir,
Yours &c.
AN ELECTOR.

Quebec, 22nd March, 1820.

Formal Dissolution, Lower Canada.[1]

N°. 6

Legislative Council
Monday, 24th April, 1820.

This day, at 3. o'clock, His Excellency the Administrator of the Province came down in state to the Legislative Council Chamber, and being seated on the Throne, the Gentleman Usher of the Black Rod was sent to command the attendance of the Assembly, which being come up, His Excellency was pleased to address both Houses as follows.

Gentlemen of the Legislative Council,
And
Gentlemen of the House of Assembly,

I am under the painful necessity of declaring to you, that it hath pleased Almighty God to call to his Mercy, our late Sovereign Lord King George the Third, of blessed Memory, by whose decease the Imperial Crown of the United Kingdom of Great Britain and Ireland is solely and rightfully come to the High and Mighty Prince George, Prince of Wales, who is thus become our only lawful & rightful Liege Lord George the Fourth, by the Grace of God, King of the United Kingdom of Great Britain and Ireland, Defender of the Faith.

And then the Honorable the Speaker of the Legislative Council said

N°. 7

" Gentlemen of the Legislative Council,
And
" Gentlemen of the House of Assembly,

" I am Commanded by His Excellency the Administrator of the Government of this Province, to declare that as it hath pleased Almighty God to call to His Mercy our late Sovereign Lord King George the Third, of blessed Memory, this present Provincial Parliament by his Decease, and by His Excellency's public notice and Proclamation thereof, is dissolved—and this Provincial Parliament is hereby declared to be, and is dissolved from henceforth accordingly."

[1] *Q. 155, pp. 161-162.*

MINUTES OF EXECUTIVE COUNCIL, UPPER CANADA, 2 JUNE 1820.[1]

At a Council holden at York this day—His Honor the Administrator, was pleased to observe, that the period for the legal existence of the late Parliament expired on the 1st of June: and suggested the propriety of Summoning a New Parliament, to meet the twenty fourth of July next, without reference, to the Manner in which the last Parliament expired, whether by the Dissolution of his late Majesty George the Third, or by limitation for its existence, enacted by the 31st George the 3rd

EXPENDITURE OF MONEY, LOWER CANADA.

REPORT OF EXECUTIVE COUNCIL ON PROVINCIAL REVENUE AND EXPENDITURE, LOWER CANADA, 16 JUNE 1820.[2]

May it please Your Lordship

By Reference to the 2d May the Committee of the whole of His Majesty's Executive Council was directed to take into consideration The actual State of the Province in consequence of the want of an adequate Parliamentary Provision for the Expenses which His Majesty's Provincial Government may be called upon to pay to the Officers of His Majesty's Government and for other purposes and to Report particularly upon the following Questions Vizt.

1st What are the Charges against His Majesty's Government in the Ordinary and extraordinary Expenditure of the Province which it will be right for your Excellency to pay, and 2d. out of what Funds such Payments ought to be taken.

In obedience to this Reference the Committee have proceeded to the Consideration of the various and important Objects to which it relates and the result of their deliberations they have now the honour of submitting to your Excellency.

The Revenues of this Province are of three Descriptions and proceed.

1st From the Laws in force at the Period of the Conquest

2d From Acts of the Imperial Parliament

3d From Acts of the Provincial Parliament.

The Expenditures of the Provincial Government are of two Descriptions

1st Salaries which are the Sums paid to those who execute the Duties of the several Offices of the Government

2d Expenses which are Sums paid for other purposes.

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[1] *Upper Canada, State Book G., pp. 103-104.*

[2] This report expresses the considered opinion of the Executive on the financial question, and is referred to, time and again, during the ensuing years as the guiding principle of executive action. The appendices are too voluminous to print here. *Lower Canada, State Book J., pp. 88-97.*

The Offices of the Government are of three Classes—

1st Offices constituted by the Legislature.

2d Offices constituted by the Executive Government, and recognized by some Act of the Legislature

3d Offices constituted by the Executive Government and not recognized by any Act of the Legislature

The Expenses of the Government are of two Classes Viz^{t} Ordinary and Extraordinary.

The Ordinary Expenses are those which are incurred incidentally and of necessity in the Execution of the permanent Offices of the Government and in other Matters of permanent establishment.

The Extraordinary Expenses are those which in like manner are incurred incidentally and of necessity but in other respects do not fall within the Description of Ordinary Expenses.

It is the opinion of the Committee

That the entire nett Revenues of the Province (The expense of collecting keeping and paying, being first deducted from the gross Amount (See Appendix A) stand pledged to the payment of the Salaries due to the persons who have executed Offices of the first and second Class being permanent, and of the Expenses properly incurred in the Execution of such Offices either by positive Appropriation or by virtual and implied Appropriation.

That to the payment of the Salaries due to the persons who have executed Offices of the first and second Class which are not permanent but temporary, and of the Expenses properly incurred in the Execution of such Offices either by positive Appropriation or by virtual and implied Appropriation.

That to the payment of the Salaries due to the Persons who have executed Offices of the first and second class which are not permanent but temporary, and of the Expenses incurred in the Execution of Offices of this Description the entire Revenues of the Province are not pledged and that the Salaries and Expenses of such Offices must be paid from the positive Appropriations of the Legislature to such purposes, and,

That to the payment of the Salaries due to the Persons who have executed Offices of the Third Class and of the Expenses incurred in the Execution of Offices of this Description The Revenues of the Province are not pledged, And that the Salaries and Expenses of such Offices must be paid from the Military Chest or from the Funds raised in this Province by virtue of the British Acts of Trade and annually remitted to England by the Collector of the Customs of the Port of Quebec.

With respect to other Expenses ordinary and extraordinary not comprehended within the preceding classes of Expenditure (Vide Appendix C.) a determination of the Question whether they respec-

tively do or do not proceed from an Act of the Legislature or from an Act of the Executive Government recognized by the Legislature will determine the Fund from whence payment is to be made.

The Committee having applied the principles above stated to the several Expenditures of the Government have classed them in four Statements vide Appendix D N^{os} 1.2.3.4) which are hereunto annexed and they beg leave to refer to them and to the other Papers composing the Appendix as part of their Report. They specify the description of each expenditure and the fund from which in the opinion of the Committee the Amount ought to be taken.

In explanation of these Statements and of the principles upon which they are founded the Committee feel it proper to advert briefly to some circumstances which are peculiar to this Province.

Canada became a dependent Province of the Crown of the British Empire by Conquest.— By the effect of the Conquest the King became the sole Legislator of the Colony with the Power of taxing the Colonists by his sole Authority (a)

(*a*) See the case of Campbell and Hall Cowper's Reports P. 204.

This was the state of Canada until the year 1774 and during this Period many offices were created by the Crown and Salaries affixed to them by the same power.

In 1774 The King permitted the two Houses of the Imperial Parliament to participate in his Right of Legislating for Canada— And by the Statute 14th Geo. III C. 83 a Local Legislature was established in the Province consisting of a Council appointed by the Crown whose Legislative Powers were exercised with the King— The Limits of the Territory subject to this Jurisdiction were designated by the Statute and declared to be the Province of Quebec.

This was the State of the Colony from 1774 to 1791, during which Period other Offices but few in Number were created by the Crown, and Salaries affixed to them by the same power and of these nearly all were recognized by Legislative Acts of the Council of Quebec—

In 1791 upon the Petition of his Canadian Subjects His Majesty was graciously pleased to permit the People of the Province of Quebec to participate with a Legislative Council in his Right of Legislating by Representatives of their own choosing,— Of whose Jurisdiction the Limits were as before designated and the Territory which they included was declared to be the Province of Lower Canada

This has been the State of the Colony from 1791 to the present day during which period but few new Offices have been created and these are principally the Offices appertaining to the Provincial Parliament.

Upon the Commencement of the present Constitution a Message was sent to the Legislative Council and Assembly requiring an Aid for the support of His Majesty's Provincial Government but intimating than [sic] an Aid equal to the Amount of the whole Expenditure was not then expected. And with intent that the two Houses

might officially have knowledge of the Offices which have been constituted and were then established and for which in Salaries and Contingent Expenses The Aid was asked a List of the whole Accompanied the Message.

In consequence of these proceedings new Duties were imposed by the Provincial Statute 35 Geo. III Cap. 9th and by the same Act £5000. Sterling were appropriated towards defraying the Expense of the Administration of Justice and of the support of the Civil Government in this Province generally, as it then stood—

To The Message by which the first Aid was required and to which Reference hast just now been made The Legislative Council returned the Thanks of that House and assured the Governor in Chief (Lord Dorchester) That the Legislative Council would ever be ready to give their concurrence to the raising of all such Aids as the Public Exigency might require for the due support of His Majesty's Government in this Province."

And in the year 1810. By Addresses to the King to the Lords and Commons of the Imperial Parliament and to the then Governor in Chief Sir James Craig, The Assembly unconditionally offered (a) "To pay the Civil Expenditure" And "to defray all the Civil Expenses of the Administration of the Government of the Province."

(a) See Journals House of Assembly Vol. for 1810. Pages 134. 138. to 140, also Page 218.

The Offer made by the Assembly in 1810, In which the Legislative Council had previously by their Answer to Lord Dorchester's Message in the year 1794, assured their concurrence, was accepted by His Majesty in 1818 and his Acceptance thereof was formally announced to both Houses of the Provincial Parliament by His Excellency Sir John Coape Sherbrooke in his speach from the Throne on the 7th of January.

Journals House of Assembly Vol. 27 P. 7

The Sum required for that year (£40,263.8.9) was asked to defray the Expenses of the Civil Government as it then stood, and this sum by the Address of the Assembly of the 26th of March 1818 and the Provincial Statute 59th Geo. III. C. 25 was paid from the Funds of the Province without Diminution of any kind.

From the Facts stated the following Inferences are drawn by the Committee.

1st That all Offices created antecedent to the passing of the Quebec Act 14th Geo. III Cap. 83 were created by the Crown and recognized by the Legislature His Majesty being until that Period not only the Sovereign in Executive Power, but the sole Legislator of the Province.

2d That the Election of Members to serve in Assembly, The Appointment of Members to constitute the Legislative Council in the year 1792, and the cooperation of both in enacting the Statutes passed in the first Session of the Provincial Parliament, was a formal acceptance on the part of all the people of this Province of the Constitution established by the Imperial Statute 31st Geo. III. Cap. 31, And (that Statute having reference to the Government of the Province in future *only*) was an entry by the Legislature on the behalf of

the People of this Province, into the Rights which it gave, without Change of any kind in the Executive Government and consequently a Legislative Recognition of the Offices which constituted the Executive Government at that Period.

That the above Legislative Recognition was confirmed by the address of the Legislative Council in Answer to the Message of Lord Dorchester in the year 1794. By the Provincial Statute 35th Geo. III. Cap. 9. By the Addresses of the Assembly in the year 1810— And ultimately renewed and confirmed by the Provincial Statute 59th Geo. III Cap. 25.—

That the Address of the Legislative Council in answer to the Message of Lord Dorchester in the year 1794 The Addresses of the Assembly to the King to the Lords and Commons of the Imperial Parliament and to Sir James Craig in the year 1810 and the acceptation of the Engagements therein contained by the Crown in the year 1818 constituted a Contract between the People of this Province and the Crown By which the Assembly having undertaken Voluntarily and consequently being bound to pay all the Civil Expenses of the Administration of the Government, And the Legislative Council having undertaken and consequently being bound to give their concurrence to the raising of all such Aids as the Public Exigency may require for the due support of his Majesty's Government have with the consent of the Crown pledged the Revenues of the Province for the Payment of the Salaries and Expenses of all Offices which the Legislature have either created or recognized—And thus virtually and impliedly appropriated to these purposes all such portions of the Provincial Revenue as are not already especially appropriated to others

The Disposition of the Assembly to diminish the influence of the Crown and to engross power of every kind of which we have too much experience renders it probable that that House may be induced to recede from this unconditional contract to pay all the Civil Expenses of the Government and as there is no tribunal to which a recourse may be had to compel the performance of it. It will remain with his Majesty's Government to enforce it by withholding the Royal Assent to every and any appropriation of the unappropriated Revenue which may be proposed until so much shall be appropriated as shall be sufficient to satisfy the Priviledged Claim of His Majesty which has been stated and to which under the peculiar Circumstances of the Case He has an unquestionable Right in preference to all others.

All which is nevertheless humbly and respectfully submitted

By Order.
Signed

16th June 1820

J SEWELL
Chairman

LOWER CANADA, CIVIL LIST, 1820.

Bathurst to Dalhousie[1]

Downing Street
11 September 1820

Copy
Private and
Confidential

My Dear Lord,

In my dispatch of this days date I have shortly stated for your instruction and guidance the principles upon which I consider it necessary that your conduct towards the House of Assembly should be regulated.

But wishing to call your attention to the subject rather more in detail than falls within the strict limits of an Official Dispatch I trouble you with this private communication.

The question for Your Lordship to decide, is, whether the Funds which the Crown can appropriate without the assistance of the Legislature are adequate to carry on the Government. By the amount with which The Duke of Richmond furnished me in his private letter of the 18th May 1819,[2] it appeared that the existing expences of the Government or in other words the Civil list was about £40,000 per annum and that the Revenue of which the Crown had the disposal, independent of the Legislature amounted to about £23,000, leaving an unprovided surplus of about £17,000

To make up this sum, you may consider yourself at liberty to issue to the extent of £12,000 from the Army Extraordinaries, that being the calculated amount of the Revenue of Customs and Post Offices which is raised in the Colony and remitted to this Country, and which it appears just, in a moment of emergency to apply to the necessities of the Province. With respect to the remaining £5,000 I should hope, that Your Lordship would have no difficulty in reducing the expenditure of the Civil list by that amount. The success of the struggle with the House of Assembly depends entirely on being able to defray the expences of Government without their assistance, and nothing therefore must during that struggle be paid out of the Civil List, but what is essentially necessary. I shall, under these circumstances certainly consider you perfectly justified in deferring to pay The Lieutenant Governors salary, and any other which may stand under similar circumstances. The salaries of The Catholic Clergy might, perhaps, be also postponed, though in doing this much delicacy must be used, and care taken to convince them, and I know no better course than by confidential communication with The Bishop, that it is only the necessity of the moment which leads to the postponement of their acknowledged claims. Care also must be taken, that when-

[1] *G. 11, pp. 70-73.*
[2] In this letter the Duke of Richmond gave a detailed account of revenue and expenditure. He declared that the revenue was sufficient for the necessary expenses and proposed measures for making the Executive independent of the Legislature. *Q. 152, pp. 169-200.*

ever the Assembly meet, the first business submitted to them should always be the vote of a sum of money "to make good the deficiences of the Civil List" and their immediate prorogation be the consequence of their noncompliance.

The Duke of Richmond had looked to this Bill to be passed by the Imperial Parliament for regulating the Trade of the Canadas, as a measure calculated to increase the Revenue of the Crown: But drawn as the Bill is, I confess, that it does not appear to me calculated to effect this object, nor indeed, am I aware how any Bill could be so made to operate effectually, without alarming the jealousy of the Colony, and virtually violating the Pledge given by Parliament in 1778. It was indeed my intention to have submitted the Bill to Parliament during the last Session, but as it had undergone some alterations, and I entertained legal doubts as to the propriety of the Penalties which it imposes upon parties who transgress the Provisions, I preferred postponing it until it should have undergone your consideration. A copy of it is now transmitted to you for that purpose.

I am not aware that it is necessary for me to trouble Your Lordship at any greater length. If it be possible to carry on the Government for a few years, without the aid of the Assembly it will give the best chance of the abandonment on their part, of the principles on which they have latterly acted. And as Your Lordship will agree with me, that if this be not possible the only course to be pursued is one of compromise, I am confident you will use every effort in your power, so to husband your means, as to avoid this latter alternative.

You will observe, that I have proceeded throughout, on the supposition that the Assembly would not vote the Civil List of the Province. I have certainly no hopes of their doing so, but you will not, I am sure, understand me, as in any wise implying that the application is not therefore to be made to them in the manner which you may consider best calculated to ensure it a successful reception.

Believe me
My dear Lord
Yours most faithfully

(Signed) BATHURST

L[t] General
The Earl of Dalhousie G C B
&c &c &c

Reply of Assembly, Lower Canada, 19 December, 1820.[1]

When the Accounts of the General Expenditure in the administration of the Government, during the last two years, are laid before us, according to Your Excellency's directions, they shall have our earliest and serious attention: and we shall also take into that respectful consideration which is due to every communication on the part of His Majesty's Government, the Accounts which

[1] *Journals of Assembly, Lower Canada, 1820, p. 48.*

Your Excellency is pleased to say that he will lay before us, of the Expenses annually incurred in payment of the Salaries of Civil Offices permanently established for the honour and support of His Majesty's Government in this Province, including such occasional payments as are unavoidable under it.

We should, however, hold ourselves to be wanting in that sincerity which is due to the frankness of Your Excellency's character, in that duty and respect which we owe to our Sovereign, by whose command Your Excellency has submitted the proposal of an additional and permanent appropriation, which, with that already made, would exceed half the usual amount of the whole Provincial Revenue, were we not, even in this early stage of the proceeding, most humbly to represent, that the declared sense of our constituents, the duty which we owe to our posterity, and to that constitution of government which the wisdom and beneficence of the mother country has conferred upon this Province, together with the variable and uncertain future amount of that Revenue, which, as well as our resources, depend on a trade at this moment peculiarly uncertain, will preclude us from making any other than an annual appropriation for the general expenditure of the Province, conformably to the recommendations of His Majesty's Government, as signified to the Parliament of this Province by His Excellency Sir *John Coape Sherbrooke*, late Governor in Chief, in his Speech delivered from the Throne at the opening of the Session, on the seventh January, one thousand eight hundred and eighteen.

We pray that Your Excellency will accept our humble assurance of the unalterable disposition of this House to vote annually, in a constitutional manner, according to that recommendation, and to the solemn offer of the Assembly in the year one thousand eight hundred and ten, all the necessary expenses of His Majesty's Civil Government in this Colony, in the honourable and permanent support of which none are more deeply and sincerely interested than His Majesty's loyal subjects whom we have the honour to represent, or more anxious to merit the continuance of the confidence which His Majesty is graciously pleased to express of our loyalty and duty.

SPEAKER OF ASSEMBLY CALLED TO THE EXECUTIVE COUNCIL.[1]

MINUTES OF EXECUTIVE COUNCIL, LOWER CANADA, 28 DECEMBER, 1820.

His Excellency at the same time informed the Board, That "deeming it a Measure that will tend to promote the best Interests of this Province he had resolved to call the Honorable Speaker of the House of Assembly to a seat at the Board of His Majesty's Executive Council—at the same time His Excellency was pleased to state, "that in recommending this Measure for His Majesty's approbation, it was his Intention to solicit a special Mandamus for the Speaker Ex officio and that he wished his Reasons for this Measure to be recorded in Council and communicated in the proper manner to the Speaker"—

"His Excellency observed, First, that he thinks it a Distinction due to the Person who is chosen and declared the first Commoner in this Province." Secondly, "That he thinks His Majestys Representative thereby has the Right to consult and advise with the Speaker officially on public Measures" Thirdly, "That he thinks it right that the Speaker ought to have the advantage of

[1] *Lower Canada, State Book J., pp. 143-144.*

knowing the Sentiments of His Majesty's Representative on Public Measures, and that cannot be in any other way so fully obtained as in the Character of a Privy Councillor of the Governor."

His Excellency further informed the Board, "That in the same view it was his Intention to recommend to His Majestys Government that the Civil Secretary of the Government in whom also is to be joined the Duties of Provincial Secretary, should have a seat in the Executive Council Ex officio, and that in virtue of the Powers vested in him he desired that these Gentlemen should be called to the Board until the Pleasure of His Majesty shall be known."[1]

RELATIONS OF LIEUTENANT GOVERNORS AND GOVERNOR IN CHIEF.

Maitland to Bathurst.[2]

York, Upper Canada
December 15th 1820

My Lord,

Circumstances have hastened the necessity which I have long foreseen, of an appeal to His Majesty's Government, for more explicit Instructions as to the civil relation of the person administering the Government of this Province with the Governor in Chief, when residing in Lower Canada.

The immediate cause for this appeal, arises out of the Military Settlement in this Province, formed since the late War by Reduced Troops and European Emigrants furnished with provisions and tools of husbandry by the Quarter Master General's Department; and therefore, by an Act of this Government with Your Lordships concurrence subjected to the Supervision of The Commander of the Forces.

When honored by His Majesty with the civil Command in Chief of this Province as Lieutenant Governor, I considered the appointment as distinct from the Government of Lower Canada, responsible to His Majesty's Government, only, and in direct communication with it.

The Earl of Dalhousie's declaration at parting with the Legislature of Nova Scotia; when He removed to Quebec, afforded the first intimation of a direct active superintendence over the Province in His absence, and was the only hint of such a power except a recent appeal from the Legislature of Prince Edward Island.[3]

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[1] This experiment was not a success and on 6 January, 1823, the Governor notified the Council that "Mr. Papineau being no longer in that public situation cannot now be considered as a member of the Council." The Council record continues:

"His Excellency further informed the Board that as the advantages he had expected to result from the presence of the Speaker in the Executive Council have not been realized, it is not his intention to persevere in the Measure of calling the Speaker to a Seat in the Executive Council." *Lower Canada, State Book J.* p. 400.

[2] *Q. 328, pp. 185-197.*

[3] A quarrel having arisen between the Lieutenant Governor and Legislature of Prince Edward Island, appeal was made to the Governor General, the Duke of Richmond. On March 29, 1819, Richmond transmitted the papers to Lord Bathurst without expressing an opinion. *Q. 152, pp. 70-97.*

Enclosure. No. 1. No. 2. A request from Lord Dalhousie through the Deputy Quarter Master General to add certain persons to the magistracy of the District in which the Military Settlement is situated was unhesitatingly complied with, and direction given to the Crown Officer to insert their names in a new Commission of the Peace.

Before it could conveniently issue the short delay was noticed in a Communication from the Deputy Quarter Master General; No. 3. which perhaps would not have appeared so exceptionable had I not received intimation of Lord Dalhousie's design to organize a body of armed Civilians in the Province which had it been sanctioned by the Militia Laws would have been a direct assumption of the Civil Government.

I merely suggested to His Excellency the possibility that His purpose might be obtained without so strong a measure a suggestion prompted by considerations so obvious, that I thought it unnecessary to do more than hint them to His Excellency— I trust they appeared satisfactory, as I received no further communication on the subject.

When the Commission for the Magistrates was re-urged by the Deputy Quarter Master General I was induced to address His Excellency (No. 4)

I am not aware of habitually laying an undue stress upon Punctilio but I am not ignorant that to a certain point Form and No. 5. Ceremony are necessary to uphold the order of Society— I was constrained to notice that the usual decorum was not observed in the communications from The Commander of the Forces to me as Civil Commander in Chief of this Province an innovation which after consideration His Excellency seems resolved to adhere to.

I owed something to myself; much to the situation I have the honor to hold; I was fearful to excite dissention, and averse to commit the Rights of others— I adopted a middle course I com- No. 4. municated my doubts to Lord Dalhousie, and begged that His Excellency would condescend to explain the true light in which I was to consider the repeated communications of Colonel Cockburn as Deputy Quarter Master General upon a subject connected with the Civil Administration of this Province.

His Excellency's explanations which are voluntary extended to His views of general control, are communicated in a Letter, which though I am entirely satisfied there is no part of it that His Excellency could wish should be withheld from the eye of Your Lordship; No. 6. I am not at liberty to treat as official but He has been made aware that I consider myself obliged to state hypothetically certain positions that I may receive thereon the Instructions of His Majesty's Government.

In this situation I feel how much I shall need Your Lordship's indulgence for unless credit be given to me for having other grounds for proceeding besides those which it is in my power at present to exhibit I shall hardly appear justified in entreating Your Lordship's

instructions for my guidance on the unsupported suppositions That His Excellency may open His Commission in the Spring and take the Oaths as Governor in this Province— That I may in the mean time be questioned on such subjects of my administration as His Excellency may think proper to enquire into— That His Excellency may expect that His suggestions with respect to the Government of this Province shall be entertained with a ready compliance claimed from the obligation of Duty rather than looked for from a concurrence of Judgment— And yet I cannot conceal from myself, nor will my duty permit me to conceal from Your Lordship, my conviction that unless what I now submit meets the early consideration of His Majesty's Government I shall be called upon to decide without the aid of Your Lordships instructions upon these important points on which I can find none—

The Commission, or Warrant of Lieutenant Governor evidently supposes the non residence of a Governor in Chief. The Lieutenant appears to have no instructions but to exercise the powers of the Governor's Commission in His absence. Yet I cannot think that the Governor's presence on a visit to the Provinces should interrupt the exercise of the Lieutenant Governor's functions, unless indeed misconduct justified his removal—

It is most certain that if at pleasure The Governor in Chief supersedes the Lieutenant as Civil Commander in Chief, a measure so unprecedented will be accounted for only in that way; and no palliation of the measure will restore that confidence and respect so essentially necessary to the person who is to preside over a jealous and turbulent Legislature. The very surmise that such a power intervenes between His Majesty's Lieutenant Governors and His Majesty's Government will shake the foundations of every system founded on local and personal experience—

When I assumed the administration of this Government I found the Province in a state of approaching Anarchy which it required strong measures to prevent they were instantly adopted, and without the use of force success attended the suitable application of legal Powers—

It were unreasonable, however, to suppose, that a bad leaven so generally diffused as to raise a Convention from all parts of the Province sitting in the Capital, and dictating to the Legislature, could already so entirely have subsided as to leave no remains! There still my Lord exists a certain degree of ferment in the minds of the disappointed which wants only opportunity to spread again through the mass of the Population—

No means can be devised so likely to produce this effect, as the unprecedented measure of a Governor in Chief taking the Oath of Office in this Province without a view to permanent residence.

It may not be known to His Excellency that by such a step He actually assumes the direct administration of the Government, which during His residence must be administered in His name—

The proclamation of His Style, indispensable on such an event, will be the signal to all who have supposed Grievances— This effect and the embarrassment it produces, I have already experienced; as His Excellency has received in this Province and recommended applications the prayer of which, though His Excellency was not aware of it, the people of this Country must have known, I had it not in my power to comply with; and on the subject of which I had ceased to be harassed with fruitless applications.

The Grant of the Waste Lands of the Crown in the dispensation of an Angel would be the fruitful source of imaginary Grievance.

At the period of my Arrival the tide of Emigration from the United Kingdom was rapid, there was no Land surveyed for the accommodation of Settlers nor was there any fund to pay for Surveys without calling upon the Treasury of the Nation I adopted means to procure Surveys without disbursement—

A great proportion of the new Population was indigent, and unable to pay the moderate fee on the Patent— to such, I made the Grant gratuitous; and raised the charge on the Patent to those who could afford it, in order to compensate the Service of the Patent Officers and to meet other Contingencies.

I destined particular tracts to be sold to provide a future Asylum for the Regulars and Militia Forces in the Province—

I have rigidly insisted on the performance of the Settling duties—

An equitable amendment which I procured in the Assessment Law, leaves it no longer at the option of great Landholders not resident on their property, to evade its Provisions—

In conformity to the Policy and indeed to the absolute commands of His Majesty's Government I have resisted all solicitation to encroach on the Crown Reserves.

These things, equitable in themselves, and obviously beneficial to the Province at large, were offensive to many,—and are not the less so because it is now supposed they are not all approved of by the present Governor in Chief.

Every measure projected has been communicated to Your Lordship and with ready and cheerful submission in the slightest disapprobation of His Majesty's Government received but unless so restrained, I hope that I am not to be overruled by the Commands or the requests equivalent to Commands, of The Governor in Chief, whilst He administers the Government of another Colony; or places Himself in a situation to exercise a temporary control in this, without a view to permanent residence—

The conviction that such an interference on the part of the Governor in Chief, if it could be constitutionally exercised, must inevitably neutralize the power of the Lieutenant Governors of this Province to serve His Majesty efficiently, seems to have been so universal; that the administration of the Government by all my Predecessors affords no one instance of a contrary understanding—

This uniform concurrence of Practice proves that I am adopting no new principle in holding myself exclusively and directly responsible in my situation of Lieutenant Governor to His Majesty's Ministers—

I dare not acquiesce without question in an innovation which would place my Successors on a ground altogether new— I think Your Lordship would not approve of my doing so. It is my misfortune that after so many administrations the necessity of this discussion should first be thrown upon me: but now that it has arisen, the perplexity it occasions me makes it clearly my duty not to leave so important a question to embarrass my Successors.

At the same time I entreat Your Lordship to believe, what I trust The Earl of Dalhousie feels equally with myself, that I should have been found as unwilling as any of my predecessors to differ from the Governor in Chief, upon any point that had been sanctioned by usage; or that was not of too great importance to have been conceded from mere facility—

I cannot help repeating my extreme reluctance and regret at being obliged to call Your Lordship's attention to this subject but I fear I shall soon be compelled to decide whether, if my idea of the Civil Administration of this Province shall unhappily differ from His Excellency's; His discretion or mine is to govern— An important question, which no doubt might be set at rest, with least inconvenience in it's present stage—

The necessity of conveying to me immediate Instructions upon the questions I have stated may better appear to Your Lordship, by my declaring explicitly what I shall conceive it my duty to do if the decision be thrown upon me, while I remain without them—

If His Excellency The Governor in Chief should come into this Province and take the Oaths of Office— I shall consider the powers given to me by my Warrant necessarily suspended by the very terms of it, during His presence: and that all Acts of this Government must during that time be performed in His Name—

Conceiving that this willing exercise of courtesy on a point on which there are no Instructions, cannot be disapproved of by Your Lordship, I will continue to communicate freely to His Excellency on the affairs and interests of this Province; so long as His enquiries do not appear in any degree to proceed from a supposed right to question me as to the Policy or System of my Government; or to call me to an account which I acknowledge myself to owe only to His Majesty—

His Excellency's suggestions of any measures to be adopted by me as Lieutenant Governor of this Province shall as suggestions be respectfuly received, but must be acceded to, or rejected, only as I may concur in their wisdom and experience: And I shall consider that my reasons for not adopting them, can only be demanded by His Majesty's Government.

Lastly should His Excellency in any new instance receive petitions from persons within my Government and claim my attention to the prayer of them; I shall confine myself, to transmitting them with my decisions to His Majesty's Government.

I have the Honor to be
My Lord
Your Lordship's
most obedient
Humble Servant
P. MAITLAND

P.S.

Since writing my dispatch, among other communications in my office, from The Governors in Chief, all clearly confirming me in the conviction, that no idea of a direct control or Superintendance over the Government of this Province has been ever before expressed by any Governor in Chief to any of my Predecessors, I have found a Letter from Lt. General Prescott /then Governor in Chief/ to M^r President Russell, at that time only temporary Administrator of the Government of this Province: in which, the idea, indeed the power, of directing in any matter relative to it's Civil Government is disavowed by The Governor in Chief, almost in the very terms in which, before I had seen that Letter, I had expressed my own sense of the existing relation between the two Governments—[1]

No. 7.

DALHOUSIE TO BATHURST[2]

N°. 24. QUEBEC 18th January 1821.

MY LORD.

The want of information or regular Official Communication between the Lieutenant Governors of His Majesty's North American Provinces and the Governor in Chief, has led me to address a Circular letter to those Officers; with the View of collecting in time, Documents of Official Authority, by which to judge of the interests of the Provinces separately, and which are essentially necessary to the person charged with the Command over all of them.

As it is possible that this step may give offence to some of those Officers, I have thought it proper to send a Copy of my letter and questions Contained in it for Your Lordship's information, and to shew my motives in adopting the Measure.

I have the honor to be
My Lord
Your Lordship's
Most obedient
Humble Servant
DALHOUSIE

The Right Honb^le.
The EARL BATHURST
K.G.
&c &c &c

[1] Prescott to Russell, 31 July, 1797, "The Actual administration of the Government of Upper Canada being vested in you I can interfere in this matter no farther than by offering my advice which you will adopt or not as your local knowledge and the circumstances of the case render expedient." *Q. 328. p. 209.*

[2] *Q. 157, p. 38.*

Correspondence with Lieutenant Governors, 1821.[1]

[16 January 1821]

With the intention of Commencing an enquiry into the state, and general system of the Administration of Government in each of the Provinces committed to my charge, & in which I do not actually reside & govern, I hereby instruct The Civil Secᵛ. of the Governor in Chief, to make the proper arrangement in his Office, for the conducting this Correspondence as a separate & confidential branch of that office.

D
Governor in Chief

draft of Circular to the Lt. Governors of Provinces. Upper Canada New Brunswick Nova Scotia Prince Edwards Island.

I address Your Excellency upon a Subject which I deem to be essentially important in the proper discharge of the duties of the Command to which H.M has been pleased to appoint me—but I must in the first place assure Your Excellency, that the enquiries I shall make, are not intended to interfere in any the smallest degree with that Local Administration which is vested by H.M. in you as Lᵗ Govʳ my enquiries are for information; & to enable me to communicate confidentially with you upon measures for the general welfare and advantage of HM. North American Provinces—

On assuming the Authority entrusted to me, I found, that there does not exist here, any official information to afford me a proper knowledge of the actual state of these Provinces severally—information which is, in my idea, highly desirable and even necessary, with a view to unite the interests, facilitate the defence, and contribute the resources of each to the protection & safety of all.

A concerted cooperation with the Lᵗ Governors of the Provincial Governments would enable me to combine measures, and act in unison with their advice; on all occasions having the manifest advantage of a foreknowledge of the wants, & of the means available at every point of this extensive Command—

With these sentiments I have transmitted certain questions upon which I request Your Excellᵛ will favour me with a full report separately, as soon as may be convenient.

I have the honor

D

Circular to all.

1. What is the Amount of the Annual Revenue & Expenditure—taken upon an Average of the last six years.
2. In what state is The Militia, & what is the number enrolled in each County. What is the formation—& what is your opinion of the Zeal & spirit towards this most important system of national defence

[1] *Lower Canada Sundries, S 151,* Nos. 60-61.

3. In what state are the great leading roads—which of them do you consider fittest for the movement of troops—most important to be attended to—and what others have you in Contemplation to open for the advantage of the Province
5. Can you do me the favor to procure for me, to be deposited in the Office of The Civil Sec^{y} of Government here, copies of the Laws of the Province, and of the Journals of The Legislature
4. What is the system adopted under H.M. instructions for the granting of the waste lands of the Crown; & the expence of obtaining a grant under the various classes that chiefly apply for them—

Upper Canada.

Convey by letter to The L^{t} Gov^{r} my hopes that he will bring under the consideration of the Provincial Parliament in its next Session—the importance of a leading Communication thro' the new Military townships from Richmond landing place on the Ottawa to the village of Perth

As His Majestys Gov^{t} has lately allowed of large Sums of money being expended in aiding a settlement of that district; & as every thing there is advancing with a progress far beyond the most sanguine expectations I trust that The L^{t} Gov^{r} will see the propriety of giving some effectual aid to the object originally contemplated an object which I conceive of the highest importance to the Upper Province—

New Brunswick.

Convey by letter to The L^{t} Gov^{r} my hopes that he will bring under the consideration of the Pro. Par. in its next session, the great importance of improving the Grading line of communication from Fredericton to the line of the Province this way, and assure him of my Anxious desire to promote on my side a more easy intercourse with N. Brunswick by every means in my power—

REPLY OF MAITLAND TO CIRCULAR LETTER.[1]

Government House
York U. Canada Jan^{y} 27th 1821

MY LORD

I have the honor to acknowledge the receipt of Your Excellency's Letter with an enclosure containing certain questions and I have to assure Your Excellency that I shall answer those questions for Your Excellency's information in as satisfactory a manner and at as early a period as the duties of my Station will permit—

I have the honor to be
My Lord
Your Excellency's
Most obedient
Humble Servant
P. MAITLAND

H.E
The EARL OF DALHOUSIE G.C.B.
&c &c &c

[1] *Lower Canada Sundries, S 151, No. 76.*

BATHURST TO MAITLAND.[1]

Major General
Sir P. MAITLAND

Downing Street
9th Febr 1821

SIR,

I have had the honor of receiving your Dispatch of the 15th December, stating the apprehensions which you entertain that it may be necessary to refer to His Majesty's Government for explicit instructions as to the civil relations of the person administering the Government of Upper Canada with the Governor in Chief, both when residing in the Lower Province and in the event of his proceeding to and assuming the Administration of the Civil Government in the Upper Province. I am perfectly aware that the measure which was adopted in the year 1814 of placing the Military Settlers in the Upper Province under the Supervision of the Commander of the Forces resident at Quebec, might, in some degree raise a doubt as to the exclusive Civil Jurisdiction and Controul of the Lieutenant Governor of Upper Canada over all persons and proceedings within the limits of that Province. These Settlers, however being mostly disbanded Soldiers were regarded more as a military than as a Civil Body; and it was hoped that the advantage which has been found to result from keeping up their Military habits and retaining them for a limited time under the Controul and supervision of their Officers, might be attained without giving any further occasion to the Commander of the Forces to interfere with the Civil Government of Upper Canada than he would have possessed had the same Individuals been stationed there previous to their being disbanded. As the Settlement advanced, it of course lost much of its Military Character, and it is to this that I am disposed to impute the doubt which may have arisen on a point on which otherwise the respective Commissions and Instructions of the Governor in Chief and of the Lieutenant Governor of the North American Provinces seem to me to be sufficiently clear.

In compliance, however, with the wish which you have expressed to receive a distinct instruction on the point, I have to inform you that so long as the Governor in Chief is not resident within the Province of Upper Canada, and does not take the oaths of Office in Upper Canada, he has no Controul whatever over any part of the Civil Administration, nor are you bound to comply with his directions, or to communicate with him on any Act of your Civil Government. To His Majesty you are alone responsible for the Conduct of the Civil Administration, nor can you be relieved of this responsibility otherwise than by the evidence [sic] of the Governor in Chief within the Province and by his there taking the Oaths and assuming to himself the Administration, of which it will be his duty to give you proper

[1] *Q. 337 A, pp. 8-11.*

notice—In such case your functions as Licutenant Governor will be altogether suspended; and although you will continue to enjoy, so long as you continue within the Province, all the Salary and Emoluments of your Situation of Lieutenant Governor, you will, until the Governor in Chief quits the Province, be divested of all Civil Authority—Upon his withdrawing from it, your Authority revives to the same extent in which you possessed it previous to his assumption of the Government. If the Governor in Chief does not take the Oaths, and assume the Government of the Province, he cannot, tho' resident therein, be considered as Civil Governor, but must be regarded, as his Predecessors have been when in the Upper Province, under similar circumstances, merely in the capacity of Commander of the Forces.

I am perfectly aware that much inconvenience might result if the Power which the Governor in Chief possesses of assuming the Government of Upper Canada were to be frequently, or unnecessarily, exercised; but I have, on the other hand, such reliance on Lord Dalhousie's judgment, that I am confident his Lordship, who has been himself Lieutenant Governor of one of the North American Provinces, now within his Government, and as such has had full means of appreciating how important it is that the authority of a resident Lieutenant Governor should not lightly be interfered with, will not, without the strongest sense of public duty, avail himself of a Power which might embarrass the System of your Government, and must tend, more or less to diminish the weight of your authority in the Province particularly confided to your Administration.

I have the honor to be &c

BATHURST.

Bathurst to Dalhousie.[1]

Lt. Genl. The Earl
of Dalhousie.

Downing Street
13th March 1821

My Lord,

I have had the Honor of receiving Your Lordship's dispatch of the 18th January transmitting a Copy of a Circular which you have addressed to the Lieutenant Governors of the several North American Provinces for the purpose of collecting information on some points on which Your Lordship considers it essentially necessary to be accurately informed—

I have so recently had occasion to make known to your Lordship the principles which regulate the relations of the Governor in Chief of His Majesty's North American Possessions with the Lt. Governors of the several Provinces in which he is not resident that

[1] *Q. 155 A., pp. 87-88.*

it does not appear to me necessary to advert again to a subject upon which I should otherwise from some observations in your dispatch be induced to enter into explanations— With respect to the particular enquiries contained in your circular letter I trust that the Lt. Governors will readily afford you all the information which you required. Much of it indeed, is essential to the due Administration of your Military Command and having no reference to the Civil Government of the several Provinces can be liable to no just exception: and although other of your enquiries relate to Subjects which they may truly consider as exclusively pertaining to the Civil Government of Provinces over which Your Lordship while non-resident has strictly speaking no control yet as Your Lordship has judiciously confined yourself to a request that the desired information should be given to you and have expressed yourself in terms sufficiently guarded with respect to the Lieutenant Governor's authority, I have every reason to hope that the Circular letter may procure for Your Lordship the necessary information without giving cause to agitate the question as to Your Lordships right of requiring it.

I have the Honor to be &c—

BATHURST.

ACT TO INCREASE REPRESENTATION, UPPER CANADA, 1821.

GOULBURN TO MAITLAND.[1]

Downing Street
23d Jany 1821

Lieut. General
Sir P. MAITLAND

Private

SIR,—Among the Acts for Upper Canada for the Year 1820 is one Cap. 2 (for increasing the representation of the Commons &c) the provisions of which appear to Lord Bathurst to require some explanation of the reasons on which they rest before submitting the Act for His Majesty's Confirmation. It is with this view therefore that I trouble you with these few lines. If the power of forming Counties rested with the Crown it might give the Crown a power of extending its influence in the House by subdividing particular Counties into more than one—each having the requisite amount of Population. If the power of forming Counties rests elsewhere, it might produce a direct contrary effect; but in either Case the encrease

[1] *Q. 337 A, pp. 3-4.*

of the Representatives is a measure which may be wise or the contrary, according to Circumstances, and the unlimited encrease which the Act seems to allow is certainly objectionable at first sight. Lord Bathurst would therefore be much obliged to you to let him know what were the reasons which led to the passing this Act, and what the Evil, which it was proposed to remedy, as without this he does not feel able to decide how far it may be proper that the Act should be confirmed or disallowed.

Believe me to be &c

HENRY GOULBURN.

I ought to add that in strictness the Act ought to have a suspending Clause.

EXTRACT FROM DESPATCH No. 22

UPPER CANADA YORK May 7th 1821

MAITLAND TO BATHURST.[1]

The erection of new Counties and the subdivision of those already formed might properly I conceive in the first instance have been effected by the mere exercise of the Royal Prerogative, but the Act of 1798 having passed after being specially referred to His Majesty, and the Province being thereby divided into Counties any deviation from that division as it must interfere with that Statute can only be accomplished by an Act of the Legislature, and any attempt to exercise that power in such manner as will materially increase the representative body, can be either met when it is made, or may be anticipated by a general instruction to His Majesty's Representative here to reserve any such Bill for His Majesty's consideration.

I will only add further that the Acts of 1800,[2] and 1808,[3] by which the number of Members was enlarged, were not specially Reserved for the Signification of His Majesty's pleasure; and that I followed the course of my predecessors, in assenting to the Bill in question without delay as necessarily obliged to have a general Election in a short time after the end of the Session, and the representation as it stood, was evidently inadequate and unequal.[4]

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[1] *Q. 329, pp. 154-155.*

[2] See, *Doughty and McArthur, Constitutional Documents, pp. 245-246.*

[3] *Ibid, p. 245 footnote.*

[4] The same problem was solved on different grounds in Lower Canada. A Committee of the whole Council reported, 6 January, 1822, that in order to change the limits of Counties, application should be made to the Provincial Legislature "in consequence of the 14th Clause of the British Statute 31 Geo. III—Cap. 31." *Lower Canada, State Book, J., p. 403.* For the clause referred to see *Shortt and Doughty, Constitutional Documents, II, p. 1036.* For an attempt to re-invest the Executive with this power. See the Proposed Act of Union, clause 10, *below p. 125.*

TRADE AND NAVIGATION LAWS.

BATHURST TO MAITLAND.[1]

Major General
Sir P. MAITLAND

Downing Street
8th Febʸ 1821

SIR,

I have had the honor of receiving your Dispatch of the 12th October, representing the inconvenience sustained in consequence of its not having been distinctly ascertained whether the British Navigation Laws apply to the Province of Upper Canada, and requesting instructions for your guidance. In reply, I have to acquaint you that upon the receipt of your dispatch of the 19th of July 1819,[2] a reference was made to His Majesty's Law Officers for the purpose of ascertaining how far you were warranted in Law in considering the British Navigation Laws as applicable to the Trade of the Province carried on by means of the Lakes; but the nature of their avocations has been such as to prevent my having received as yet any report upon this Subject. It has also appeared to me less necessary to press for an Opinion in consequence of the intention, which I long since communicated to Lord Dalhousie, of submitting a Bill to Parliament[3] for the permanent regulation of the Trade of the two Provinces; the provisions of which will necessarily solve any doubts which may at present exist as to the mode in which it may be legally carried on.

Under these circumstances His Majesty deems it more adviseable that you should forbear to enforce the Navigation Laws until specially directed; and He has commanded me to instruct you accordingly.

I have the honor to be &c

BATHURST

CONTROL OVER MONEY BILLS.

RESOLUTIONS OF LEGISLATIVE COUNCIL, LOWER CANADA, 6 MARCH, 1821.[4]

RESOLVED, That it is the opinion of this Committee, that it is the undoubted constitutional right of the Legislative Council, to have a voice in all Bills of Aid or Supply, or Money of any kind, levied upon the people of this Province by the Legislature thereof, and in all Bills for Appropriations of the same, whatever the purpose may be.

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[1] *Q. 337 A, p. 5.*

[2] In this despatch, Sir Peregrine Maitland declared that some customs officers were making seizures under the Navigation Acts but that considerable doubt existed as to how far these Acts were applicable to Inland Navigation. He, himself, believed that they should be enforced since. "It is to be remarked that the general policy of the navigation Acts applies strongly to this Province, altho' our exclusion from the ocean prevents their direct tendency to increase the Seamen and Shipping of the Empire at large—for our Lakes and Rivers are of that description that a Naval Force upon them is essentially necessary to our defence in time of war,—and if in our Commerce, we are not confined to the employment of our own Ships and Seamen, when a war occurs with America, the Enemy will have an undoubted ascendancy on the waters." *Q. 325, pp. 276-279.*

[3] The Canada Trade Act (see below p. 106) made a considerable modification of the Trade and Navigation Laws. These laws had heretofore been strictly enforced in Lower Canada.

[4] *Journals of Legislative Council, Lower Canada, 1820-21, pp. 105-106.*

Resolved, That it is the opinion of this Committee, that the said right extends to the approval or rejection of all Bills of Aid or Supply or Monies aforesaid, and of all Bills of Appropriation for the whole or any part of such Aid or Supply or such Monies, and that no legal appropriation can be made without the concurrence of the three Branches of the Legislature.

Resolved, That the Legislative Council will not proceed upon any Bill of Aid or Supply, which shall not, within the knowledge of this House, have been applied for, by the King's Representative in this Province.

Resolved, That the Legislative Council will not proceed upon any Bill appropriating public money, that shall not within the knowledge of this House, have been recommended by the King's Representative.

Resolved, That the Legislative Council will not proceed upon any Bill of Appropriation, for Money issued in consequence of an Address of the Assembly to the King's Representative, (Addresses of the Assembly for the expenses of that House, excepted,) unless upon some extraordinary emergency, unforeseen at the commencement of a Session, and which unforeseen emergency will not allow of time for passing a Bill of Appropriation for the same, in the Session when the Address shall have been voted.

Resolved, That the Legislative Council will not proceed upon any Appropriation of public money, for any Salary or Pension hereafter to be created, or any augmentation thereof, unless the *quantum* of such Salary, Pension or augmentation shall have been recommended by the King's Representative.

Resolved, That the Legislative Council will not proceed upon any Bill of Appropriation for the Civil List, which shall contain specifications therein, by Chapters or Items, nor unless the same shall be granted, during the life of His Majesty, the King.

Resolved, That nothing contained in these Resolutions shall be construed to prevent or infringe upon freedom of debate and decision in this House, upon the merits of any matter which shall be recommended by His Majesty's Representative or upon any Bill relating to Public Money upon which this House, according to the spirit of these Resolutions, can proceed.

Resolutions of Assembly, Lower Canada, 14 March, 1821.[1]

[Resolved,] That the Honourable the Legislative Council cannot constitutionally prescribe or dictate to this House, the manner or form of proceeding on Bills of Aid or Supply, nor upon any matter or thing whatsoever, and that every attempt of the Legislative Council for that purpose, is a breach of the rights and privileges of this House.....[2]

Resolved, That the right of originating Bills of Aid or Supply belongs solely and exclusively to this House.....

That the right of originating Bills of Appropriation of public Money, belongs solely and exclusively to this House.....

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[1] *Journals of Assembly, Lower Canada, 1820-21, pp. 331-332.*

[2] The names of mover and seconder, and the result of each division have been omitted.

RESOLVED, That this House are astonished that the Honourable the Legislative Council have passed Resolutions and adopted Rules which affect the constitutional rights and privileges of this House, without having heard the reasons to the contrary, which might have been given on the part of this House.....

RESOLVED, That the said Resolutions have been adopted by the Honourable the Legislative Council, without any difficulty or dispute having arisen between the said Legislative Council and this House, respecting the matters therein set forth, and that the said Resolutions, adopted gratuitously and unnecessarily by the said Legislative Council, are of a nature to retard the re-establishment of that harmony and that good understanding between the two Houses, which it is so desirable should prevail for the good government, peace and welfare of the people of this Province.....

RESOLVED, That all Resolutions, by which one branch of the Legislature lay down for themselves before hand and in a general manner, a Rule not to proceed on Bills of a certain form or description which may be offered to them by another branch, is contrary to Parliamentary Laws and usages, to the Constitutional Act, and to the liberties, rights and privileges of the other branches of the Legislature, and even of that branch which adopts such Resolutions.....

RESOLVED, That by constant parliamentary usage, recognized by several Acts of the Parliament of the United Kingdom and the Legislature of this Province, the Commons of the United Kingdom and the Assembly of this Province, have frequently voted by Address, advances of Money, when the exigencies of the State and Country have rendered it necessary, and that this practice, far from being disadvantageous, has been of very great assistance to Government, as the converse would produce incalculable inconvenience and fatal consequences to His Majesty's Government.....

RESOLVED, That it is the duty of this House towards His Majesty and his people of this Province, to take into their consideration all Salaries, Pensions, and augmentations thereof, and to provide for the same with liberality and justice, although the *quantum* be not mentioned in the recommendation made to this House by the King's Representative.....

RESOLVED, That the Honourable the Legislative Council cannot directly or indirectly, abridge or prolong the time fixed by Bill of this House for the collection of any sum of Money, nor change the mode established by Bill of this House, either for the collection or application of the public money.....

EXPENDITURE OF PUBLIC MONEY LOWER CANADA.

REFERENCE TO COUNCIL, 29 MARCH, 1821.[1]

Ways & Means.

"With a view to ascertain the Means which may exist for the "purpose of defraying the Expenses of the Civil Government I wish "that Instructions should be given to the Auditor General of Public "accounts to prepare a Statement of the Monies in the hands of the "Receiver General and now at the disposal of the Crown toward

[1] *Lower Canada, State Book. J.*, p. 160.

"Public Service, specifying the particular Sources from which the "Monies may have arisen and such Charges as are provided for by "appropriation"—

"I wish also an Estimate of the Probable product of the "Revenue, Casual, Territorial or by Statute this year—Specifying "each particular source, appropriated or not, and shewing thus the "amount that will remain disposable as unappropriated"—

"In doing this I wish M[r] Coltman to consult with the Inspector "General of public Accounts—The Receiver General, the Inspector "General of the Kings Domain and the Collector of the Customs in "the manner best calculated to obtain the Information required"—

D.

First Report of Executive Council, on Ways and Means, 30 March 1821.[1]

First Report on Subjects referred in Council 29 March 1821. Payment of Public Monies.

May it please Your Lordship

The Committee in obedience to the Commands of your Excellency, have proceeded to the Consideration of the several Matters which are referred by the Entry made upon the Minutes of Council by your Excellency's Order on the 29[th] Day of March last.

Upon the Payment of the Public Monies during the ensuing year:

The Committee beg leave to suggest the necessity of having before them some Statement of the Expenditure which will be called for, and of the means which may be applied to meet it, and concurring with your Excellency in what is stated in the latter part of the Entry made on the 29[th] March they humbly request your Excellency to direct the Auditor General of Public Accounts to prepare a Statement of the Monies in the hands of the Receiver General and now at the disposal of the Crown towards the Public Service specifying the particular Sources from which the Monies may have arisen and such Charges as are provided for by Appropriation with an Estimate of the probable Product of the Revenue Casual Territorial and by Statute in this year specifying each particular source and what is appropriated and the Amount of what is unappropriated—" And the Committee are of opinion That it is highly expedient that the Auditor General of Public Accounts in the execution of the above Duty should be directed to consult with the Inspector General of Public Accounts. The Receiver General, The Inspector of the Kings Domain and the Collector of the Customs in the manner best calculated to obtain the Information required.

Upon the Payment of the Members of the Board of Audit.

The Committee concurring with your Excellency That it is just that the Members of the Board of Audit should be paid for the Duties performed by them in the years past do humbly recommend that a Warrant do issue in favor of the Hon[ble] M[r] Duchesnay for

[1] *Lower Canada, State Book J.*, pp. 162-165.

his Services at the Board of Audit for such Sum as your Excellency may deem fit to allow from the Date of his appointment 28th October 1817 to the 30th of this Month, and to the Honble Mr Kerr for such Sum as Your Excellency may deem fit to allow from the date of his appointment (6 October 1819) to the 30th of the present Month—

Upon the Grenville Canal

The Dispatch from the Earl Bathurst of the 3d April 1818 sanctioned the Payment of a Sum of Money equal to one Half of the Expense to be incurred in the Construction of a Canal from Montreal to LaChine. And the Letter from the Lords of the Treasury to Mr Secretary Goulburn of the 25 May 1819 sanctions the Payment of the one Half of the Expense to be incurred in the Execution of the several Works proposed for the formation of a Communication between the Provinces of Upper and Lower Canada by the Line of the Ottawa River—From these Dispatches it appears (the LaChine Canal and the Grenville Canal being equally parts of the Communication between the Provinces of Upper and Lower Canada by the Line of the Ottawa River) That an Expenditure on the part of the Crown equal to one moiety of the Expense of both is authorized provided the Provincial Legislature should appropriate to them an equal Sum— Therefore as the Sum appropriated by the Province towards the Construction of the LaChine Canal by the late Statute 1 Geo. IV Cap. [1] is £35000, while the Crown according to the Provisions of this act is to pay the sum of £10000 only upon this part of the proposed Communication there appears to be on the part of the Crown a Balance of £25,000 due and applicable, according to its offer to the Completion of the Remainder— But £9000, having been expended by the Crown upon the Ottawa this sum must be deducted, and then there will remain a Sum of £16000 to be expended by the Crown upon that River, upon the Grenville Canal, and such other Works as may be required to complete the proposed Communication.

In obedience to the Directions contained in the Entry made on the Minutes of Council of the 29th of March last, The Committee humbly report that "No arrangements have been made to authorize your Excellency to proceed in the Works of the Grenville Canal out of Monies to be paid by the Province"— And they respectfully beg leave to submit to your Excellency what they have above stated as the probable Reasons why no arrangements have been made—

All which is respectfuly submitted to your Lordship's Wisdom

By order

(signed) J. SEWELL
Chairman

Committee Room
30th March 1821
1. Cap. 6.

[1] Chapter 6.

Second Report of Executive Council, on Ways and Means, 28 April 1821[1]

Second Report on Matters referred in Council 29th March 1821.

May it please your Lordship

The Committee have again proceeded to the consideration of that part of the Minute of the 29 of March last which relates to the payment of the Officers of Government and the Contingent Expenses of their respective Offices—

His Majesty's Officers in the Service of the Civil Government having performed the Duties of the Several Stations in which they have been engaged to serve without any change in the terms of their Service, are of course entitled to their respective Salaries, and to the payment of such Expenses as they may have incurred of necessity and as usual in the execution of their Trust.

The Committee are therefore of opinion that Warrants should be issued as hath been customary to the Receiver General for the payment of the Salaries and Contingencies of the officers of Government as usual to the First of May next.

What proportion of the sum to be so paid is to be charged against the unappropriated Monies in the hands of the Receiver General and what is the course to be adopted to secure the Crown against loss in consequence of the Step now recommended are questions to which the Committee will give their immediate attention and upon which they will not fail to report with all practicable dispatch.

All which nevertheless is respectively submitted to your Excellency's Wisdom

By order

Council Chambers
Quebec 28th April 1821

(signed) J SEWELL
Chairman

Third Report of Executive Council, on Ways and Means, 19 May 1821.[2]

Third Report upon the Reference in Council of the 29th March 1821.

May it please your Lordship

In the Second Report upon this Reference the Committee left for future Enquiry the following Questions viz[t]

What Proportion of the sum recommended to be paid to the Officers of the Government should be charged against the unappropriated Revenues of the Province? and

What Course ought to be adopted to secure the Crown against Loss in consequence of such Proportion being so taken from the Provincial Revenue.

In the discussion of these two Questions the Committee have had occasion to reconsider their Report of the 16 June 1820, and seeing no cause to depart from the Principles laid down in that Report they humbly beg leave to refer to it as the present.

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[1] *Lower Canada, State Book, J., pp. 169-170.*
[2] *Lower Canada, State Book J., pp. 176-178.*

The Revenues of the Province arising from the Acts of the Provincial Legislature not specifically appropriated to any particular Purpose, for the Reasons stated in the Report referred to stand pledged in the opinion of this Committee for the payment of the Salaries and of the necessary Expenses, not actually provided for, of all permanent offices which the Legislature of the Province has either created or recognized and for the Payment of the same Salaries and Expenses.

The Crown Revenues, particularly the Product of the 14 Geo. III Cap. 88—The Casual and Territorial Revenue—The 5000£ granted by the Provincial Statutes 35 Geo. III Cap. 8 and 9—and the Fines and Forfeitures (if any remain after deducting the Charges of the Witnesses in Criminal Cases according to the Directions of the Provincial Statute 39 Geo. III Cap.)[1] are also pledged— It appears therefore to the Committee that the Salaries of the Officers employed and the Expenses incurred in collecting, keeping and paying, the Crown and the Provincial Revenues being first deducted from their gross amount as recommended in the above mentioned Report of the 16 of June 1820, the whole of the remaining Salaries and Expenses, defined as above must in the first instance be charged against the aggregate of the Crown Revenues, and the Balance taken from such Provincial Revenues as may be in the hands of the Receiver General and are not specifically appropriated to particular Purposes—

It will remain with His Majestys Government to secure the Crown against loss in consequence of Payments so made out of such Provincial Revenues by withholding the Royal Assent to every and any appropriation of the unappropriated Revenues of the Province which may be proposed until all such Payments so made shall be covered by an appropriation, so much of the Provincial Revenues for that purpose as shall be equal to the Sum taken for the discharge of the above stated Balance— and in the opinion of the Committee this will be the best enforced by a Royal Instruction to His Excellency the Governor in Chief to this effect.

The Committee deem it right to add that all offices and Expenses of offices of Legislative Creation, or which are merely temporary must necessarily be paid from the Funds which are specifically appropriated to their support, and that those offices which are solely of the Crown creation and have not been recognized by the Legislature as well as the Expenses of such offices must be charged against the Exchequer of the Imperial Government— The offices respectively comprehended within these several Classes are particularly designated in the Appendix annexed to the above mentioned Report of the 16 June 1820 and to these the Committee humbly beg leave to refer in explanation of this Report.

All which is respectfully submitted to your Lordship's Wisdom.

By order

(signed) J. SEWELL

19 May 1821 *Chairman*

[1]Chapter 9.

ROMAN CATHOLIC BISHOP.

BATHURST TO DALHOUSIE.[1]

Downing Street
2d April 1821

Lt. Genl.
The EARL OF
DALHOUSIE.

MY LORD,

The Roman Catholic Bishop of Quebec when he was last in England brought under my consideration certain points connected with the Administration of the Affairs of the Romish Church in the Province upon which he was anxious of receiving the decision of His Majesty's Government—

Accidental circumstances prevented my communicating to your Lordship at an earlier period the answer which I then communicated to Mr de Plessis and I am afraid that he may have felt some anxiety from the delay which has taken place.

I have however, now to acquaint Your Lordship that His Majesty has been pleased to give permission to the Revd J. Lartigue and the Revd F. Provencheur to assist him in the Spiritual Administration of the District of Montreal and the Countries situated to the North West of Upper Canada. His Majesty has been further pleased to signify His Pleasure that you should cause Letters Patent to pass the Great Seal of the Province for carrying into effect Mr de Plessis' wishes with respect to the establishment of a Roman Catholic Seminary at Nicolet as proposed by the Bishop in his letter to Sir John Sherbrooke of which a Copy is enclosed and recommended by him in his despatch to me No. 167 of the 16th Novr 1817.

I have &c—

BATHURST.

FINANCIAL ADJUSTMENTS BETWEEN UPPER AND LOWER CANADA.

No. 37.

MAITLAND TO BATHURST.[2]

UPPER CANADA, YORK.
20th August 1821.

MY LORD,

The accompanying papers will shew that there is no longer any prospect of agreement between the two provinces as to the proportion of duties received or to be received at the port of Quebec and paid to the uses of Upper Canada—A circumstance to which I am compelled by the very distressing situation in which it places the Government of this Province, to entreat most earnestly Your Lordship's early attention—

[1] *Q. 155 A, pp. 98-99.*
[2] *Q. 329, pp. 296-298.*

The result is that we are without that portion of our Revenue since June 1819; on which and on the probable future receipt under renewed agreements the Legislature of this Province had authorised me to raise Twenty-five Thousand pounds on Debentures, payable in Three years, for the purpose of discharging arrears and growing dues to the Militia pensioners.

The hopes of these Claimants, deferred for more than two years, by the want of funds thus withheld by the Province of Lower Canada has been raised to almost a certainty of gratification at this period— The disappointment will of course be extreme, as many of them have no other means of subsistence.

Although this disappointment is at the present moment the most prominent inconvenience arising from the principles adopted by the Lower Province, others are not wanting to perplex the administration of this Government, from pecuniary difficulty, which will drive me most reluctantly to have recourse to the Military Chest to defray the ordinary and current charges of Government—

I have no reason to expect any direct relief from an early call of the Legislature, but I concur in the advice of my Council on the propriety of such a measure, which I should not delay but that the Harvest and the Circuits at this Season will render it almost impracticable to collect the two Houses before the middle of November.

It seems impossible to avoid recourse to the Imperial Parliament, to settle the Amount and mode of Drawbacks on Imports at Quebec, consumed in this Province; and in the prospect of such a measure, I take leave to refer Your Lordship to a Memoir on the subject which I have the honor to enclose, with the references.

I have the honor to be,
My Lord,
Your Lordship's
Most Obedient
Humble Servant

P. MAITLAND.

The Earl Bathurst K.C.
&c^{a} &c^{a} &c^{a}

Memoir.[1]

31st Geo. 3rd Ch. 31. Sec. 46 & 47.

By the Constitution of the Provinces of Upper & Lower Canada, a distinct Legislature is given to each Province, but by the 46th Section it is provided that the power of regulation of Commerce should continue to be exercised by His Majesty His Heirs and Succesors and the Parliament of Great Britain, subject to the condition of applying any Duties which may be imposed for that purpose to and for the use of the Colony, Province or Plantation in which the same shall be respectively levied to be appropriated by

[1]This is a brief account of the question, *Q. 329, pp. 351-360.*

the respective Legislatures, but regulated as to the payment of Drawbacks of such Duties, by the appointment and Direction of His Majesty in Parliament.

This reservation was indispensable as to the two Provinces which had but one Sea-port or possible access to the Ocean, and which was situated in the Lower Province.

In 1793 The Legislature of Upper Canada, claiming to exercise a power to impose Duties on Imports into the Port of Quebec, did
Ch. 10. enact that a Duty over and above all other Duties, of four pence per Gallon, on Madeira wine and two pence per Gallon on all other wine should be received by the Collector of that Port and by him paid to the Receiver General of the Province of Upper Canada to be applied to pay the Salaries of the Officers of the Legislative Council,
Ch. 9. and Assembly, with the contingent Expences thereof. But the preceding Chapter of the same Statute had authorized the appointment of Commissioners to form a Provisional agreement with Lower Canada on this delicate Subject, and in the next Session ratified an Agreement
35 Geo. 3d. Chap. 8. between the respective Commissioners

[Really Cap. 3] 1st That Upper Canada should receive as its proportion of Duties on Wines imposed by the Legislature of Lower Canada, in 1793. and 1794. the sum of £333. 4. 2 in full.

2nd That the Legislature of Upper Canada would not impose any Duties whatsoever on any Wines Goods or Merchandize imported into Lower Canada and passing into Upper Canada, but will allow and admit the Legislature of Lower Canada to impose and levy such reasonable Duties on such Goods &ca as aforesaid as they may judge expedient.

3rd That of such Duties Upper Canada should receive one eighth and Lower Canada retain seven eighths.

This agreement which was limited to 31st December 1796, admits that the Port of Quebec was common to both Provinces, and that Upper Canada might impose Duties on Imports there, for her use, if she had not consented to commit that power, exclusively, to Lower Canada, and it also admits the mutual sense of a fair and equitable adjustment of the proportion by the respective populations then estimated as one to eight—

It was but too obvious that concord could not long subsist on such a basis.

At the expiration of this Agreement the proportion of population was questioned and resort was had to an actual Drawback to be ascertained by a Barrier and Report of dutiable Commodities passing it.

See Statement to Sir J. Sherbrooke by the Commissioners in 1817. This experiment was attended with great expense, and led to disputes which still subsist as to the Drawbacks justly claimable on the consumption in Upper Canada, which from various causes was not included in the Report at the Barrier.

See Stat. U.C. 58. Geo. 3rd. Ch. 13.

An appeal to the Mother Country was threatened but was stifled at the moment by a renewed Agreement stipulating the proportion of Upper Canada of all Duties received at Quebec to be one fifth.

The renewal of this Agreement from time to time being necessary to assure to Upper Canada the greater part of her revenue and without which her yearly expenditure could not be met, might reasonably have suggested the propriety of a guarantee, which in the nature of things between two parties independent of each other, but having one and the same Sovereign, could only be that power which could coerce the performance of the contract on either side, the Parliament of the United Kingdom.

The necessity of such a guarantee was enforced upon the notice of Upper Canada by an event which it had not foreseen.

In the fulness of confidence she had not only consented that Lower Canada should provide the means of Revenue, but also that she should direct the mode of payment, so that when the Assembly of Lower Canada separated without a direct appropriation of the one fifth for Upper Canada, which happened for two Years successively, it remained locked up in the Chest of the Lower Province, and no sense of Justice could prevail upon the Executive Governm^{t}. to authorize the payment of the same proportion as the expired agreement allowed, or, indeed, of any other—

There was a fund arising from duties imposed by the Parliament of Great Britain, before the division of the Province of Quebec, for the support of its Civil Government and the administration of justice; not at the discretion of the Legislature, but of the Lords of His Majesty's Treasury— As Upper Canada had been part of the Province of Quebec, the Lieutenant Governor in this dilemma called upon the Governor of Lower Canada for a proportion of that fund, but His Excellency on reference to the Executive Council, by its advice, declined any payment, or advance either from that fund or the general Receipt of Duties.[1]

See Report of Executive Council of L. Canada to Lord Dalhousie in Sir P. Maitland's Dispatch to Lord Bathurst N° 6 of 14th Dec. 1820.

Two Years privation of that Revenue had created an accumulation of Debt by Upper Canada, and especially to Pensioners disabled in the late War— Not doubting but that the Legislature of Lower Canada when it met for business, would repair as much as possible the injury which accrued to Upper Canada, from two Years arrear, but would also continue the same proportion of Revenue until His Majesty's Government should take the sense of Parliament on our case.

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[1]The Executive Council reported on 16 Oct. 1820 that: "The Duties collected under the 14th Geo. III C. 88, being appropriated by the Imperial Parliament to the support of the Civil Government of the Province of Quebec And the Sums which have been raised under this Act and been paid to the Upper Province having been so paid in consequence of a Special Agreement between the two Provinces which no longer exists, and as the Lower Province has been required to pay the Expenses of their own Civil Government while those of Upper Canada have hitherto been and yet are paid by Annual Grants of the Imperial Parliament.

The Committee are humbly of opinion that no part of the Sums levied under 14th Geo. III Cap. 88, should be paid to the Upper Province without the Sanction of the Legislature or the Direction of His Majesty's Ministers." *Lower Canada, State Book, J., p. 87.*

Report of Commrs 1821.

The Legislature of Upper Canada authorized the Governor to borrow on the security of that arrear and expected Revenue, where with to discharge the arrears of pension, but the Report of the Commissioners appointed to conclude a new Agreement, or continue the last, shews manifestly that resort to Parliament can no longer be delayed, either to interpose between the two Provinces by the continued exercise of the Authority it has reserved, or by repeating [sic] the double Charter, and restoring to its full operation the 14th of His late Majesty.

The latter measure will not probably be resorted to whilst others can answer the purpose. It is therefore desirable to shew that the objections to a Drawback of Duties proportioned in their Amount to the Population of the respective Provinces, are of no Weight.

Parliament provided for the contingency of a single Port for both Provinces and reserved to itself the regulation of Drawbacks.

Provisional Agreement 1796—1/8th.

The Provinces mutually agreed that the fairest principle to regulate them was the several populations, and after trial of the only other criterion, resorted again to the first, and Lower Canada was constrained to acknowledge an increased proportion in the population as 1/5th to 1/8th between the years 1796 and 1816.

Barrier at the Coteau du Lac.

As the population has more rapidly augmented in proportion in Upper Canada in the last five years than in the twenty years preceding, Upper Canada is now entitled to at least as great if not greater proportion of the Duties than that settled by the last Agreement.

It may well be supposed that a jealousy of the increasing Numbers of the Upper Province in proportion to that of the Lower, may have suggested the means now resorted to of discovering that mode of Drawback, and have given rise to the singular proposition of recurring to ex post facto evidence of purchases, Imports and consumption of dutiable goods in Upper Canada during the interval when, for want of parties an agreement could neither be continued or renewed.

See Report of Commssrs 1821.

The futility of such a proposition is so evident as to demonstrate that no agreement was contemplated by Lower Canada, and such a supposition is encouraged by the ungracious remark on the dependence of the one Legislature for its Revenue upon the Acts of another, which Upper Canada had acquiesced in because she confided in the reason and justice of the sister Province. That dependance no longer exists, the contract has expired, and the impracticability of a double Legislation on this Subject is so evident that it is hoped it will not be again attempted, but that our future reliance will be on the justice of the Imperial Parliament.

The Port of Quebec is a National and not a Provincial Subject, and, as far as relates to the Receipt of Customs, should be withdrawn from the control of either Province.

The Crisis is pressing, the Province of Upper Canada is in a State of Bankruptcy, whilst its Revenue for two years past is with-

held by the sister Province, and it remains without Provision for the future. The wisdom of Parliament may not think Proper to enforce any change without better information, but there can be no injustice in Continuing the effect of the last Subsisting Agreement, and enforcing the payment of the arrears and growing proportion of one fifth of the Duties received at the Port of Quebec, until upon fuller information it may be satisfied of the justice of increasing that proportion; and then upon a fixed principle, establish it in future by a triennial Act which shall leave the two Provinces no cause for discord.

To obtain this fuller information it may be expedient for His Majesty under sanction of Parliament, to name a Commissioner who, with one other from each Province, shall ascertain and report the arrears, if any, due to Upper Canada, and the population of either Province by an Actual Census.

Address of Assembly, Upper Canada, on the proportion of duties due from Lower Canada, 8 July 1819.[1]

May it please Your Excellency:—

We, His Majesty's dutiful and loyal subjects, the Commons of Upper Canada, in Provincial Parliament assembled, having examined the Public Accounts as far as the same have been laid before us, beg leave to represent to Your Excellency that although a large sum was received from Lower Canada during the present year on account of arrears of Provincial Duties due to this Province under the Provisional Agreement, we have reasons to know that large sums are still outstanding on the same account, as well as under an Act of the parliament of Great Britain, passed in the fourteenth year of His Majesty's Reign, intituled "An Act to establish a fund towards further defraying the charges of the administration of Justice and support of the Civil Government within the Province of Quebec in America," no part of the last mentioned duties have been accounted for to this Province prior to the year 1817.

That the authorized demand on the Provincial Treasury for the present year, as well as for the year 1820, cannot, we fear, be met from the ascertained resources at the disposal of the Receiver General; we therefore pray that Your Excellency will adopt such measures for obtaining payment of the outstanding balance, through the medium of Commissioners as may be best adapted to procure that effect.

We respectfully request leave to call your Excellency's attention to the singular situation in which this Province is placed with respect to its revenue, by the expiration of the Provincial Agreement, and the difficulties in which it must be involved should the agreement not be renewed, or any of the laws imposing Duties be suffered to expire. We feel persuaded that every consideration will be given by Your Excellency to the subject, and that some arrangement may be made with our Sister Province, or through the intervention of the Imperial Parliament, to prevent the evil which must otherwise arise.

[1] *Journals of Assembly, Upper Canada, 1819, p. 132.*

EXPULSION OF BARNABAS BIDWELL.[1]

To the Honorable the House of Assembly of the Province of Upper Canada, in Provincial Parliament assembled.

The Petition of the undersigned, Freeholders of the Incorporated Counties of Lennox and Addington, in the Midland District,

Humbly Sheweth:—

That by virtue of a Writ issued in the usual form to John McLean, Esquire, as Returning Officer, the Freeholders of these Incorporated Counties were called on to choose a Member to supply in Parliament the place of Daniel Hagerman, Esq., deceased. That the said election was accordingly held at the village of Bath, on Monday the fifth day of November last, and that the poll was kept open by a contest between Mr. John Church and Mr. Barnabas Bidwell until the succeeding Saturday, when the latter having a majority of forty-nine votes was declared duly elected.

Your Petitioners humbly beg permission to call the attention of Your Honorable body to the qualification of the person thus returned to represent the said Counties of Lennox and Addington.

They Respectfully represent that though the said Barnabas Bidwell may have resided in this Province during the necessary time, and have also become possessed of the amount of property legally required in a candidate, Your Petitioners are induced to believe, and indeed are fully convinced that there are circumstances connected with his character which render him utterly unworthy of the high honor of sitting in your august House. That at the period when the said Barnabas Bidwell first came into this Province, which was about ten years ago, divers reports highly discreditable to his character were in circulation respecting the cause of his quitting the United States. That the said Barnabas Bidwell formerly held the office of Treasurer of the County of Berkshire in his native State of Massachusetts, and that in the discharge of the duties of which office it was asserted in the newspapers of the American Union, without contradiction, and generally believed, that the said Barnabas Bidwell had been guilty of a misapplication of the Public Funds entrusted to his care, and that having unsuccessfully attempted to cover this breach of his public duty, by an erasure in his accounts, he was compelled precipitately to abandon his native State, and, pursued by a Proclamation of the Governor, offering a reward for his apprehension, to flee for refuge beyond the jurisdiction of the Federal Laws into Canada. Your Petitioners fear not to assert that these circumstances are notorious, and that they remain uncontradicted and generally credited, as well in this Province as within the limits of the American Union.

Your Petitioners beg leave further to represent that the said Barnabas Bidwell, though now claiming to be a natural born subject of our Most Gracious Sovereign, remained in the revolted colony during the whole of the Rebellion that terminated in the acknowledgement of their independence and an absolution

[1] *Journals of Assembly, Upper Canada, 1821, pp. 11-13.* For opinion of Law Officers see 1824.

of their allegiance to the British Government, and that he afterwards, as a citizen of the United States, became a Member of Congress, an Attorney General of the State of Massachusetts, and a Treasurer of the County of Berkshire in the same State.

That previously to entering on the duties of any of the above situations he was compelled by the Constitution of the State of Massachusetts to take an oath to the following effect.

"I, A. B., do truly and sincerely acknowledge profess, testify and declare that the Common wealth of Massachusetts is, and of right ought to be, a Free, Sovereign and Independent State; and I do swear that I will bear true faith and allegiance to the said Commonwealth, and that I will defend the same against traitorous conspiracies and all hostile attempts whatever, and that I do renounce and abjure *all allegiance, subjection and obedience to the King Queen or Government of Great Britain, as the case may be,* and every other Foreign Power whatsoever; and that no foreign Prince, persons, prelate, State or Potentate, hath or ought to have any jurisdiction, superiority, pre-eminence, authority dispensing or other power in any matter civil, ecclesiastical or spiritual, within this Commonwealth, except the authority and power which is or may be vested by their constituents in the Congress of the United States; and I do further testify and declare that no man or body of men hath or can have any right to absolve or discharge me from the obligation of the oath, declaration or affirmation, and that I do make the acknowledgement, profession, testimony, declaration, denial, renunciation and abjuration heartily and truly, according to the common meaning and acceptation of the foregoing words, without any equivocation, mental evasion or secret reservation whatsoever. So Help Me God."

That when the said Barnabas Bidwell was called on during the late War to take the oath of allegiance to His Brittanic Majesty, he, bearing no doubt in mind his previous oath, remarked, that he did not consider it binding, as it was compulsory, a fact which can be proved by the Magistrates who administered the oath.

Your Petitioners therefore, considering all these circumstances as undeniable, and that they morally incapacitate the said Barnabas Bidwell as a Member of our Provincial Parliament, and considering the disgrace which will justly attach itself to this Province and to your Petitioners in particular, should persons void of reputation or moral character be allowed to intrude themselves into Your respected and Honorable House, beg leave most reverently to call the attention of Your Honorable Body to this case, and intreat, should the statements above made be sustained, as Your Petitioners are convinced they can be by satisfactory proof, Your Honorable House will declare the Election of the said Barnabas Bidwell to be null and void, and thus preserve pure and unsullied the dignity of Your Honorable House.

And Your Petitioners, as in duty bound, will ever pray.

FREDERICKSBURGH,
Nov. 17, 1821.

(Signed by) TIMOTHY STORING
and 125 others.

PROCEEDINGS ON PETITION

2nd January, 1822.[1]

Mr. Nichol seconded by Mr. Horner, moves that it be resolved that the allegations contained in the Petition of Timothy Storing and other Freeholders of the incorporated Counties of Lennox and Addington, respecting certain newspaper reports and certain occurrences in the United States of America, implicating the moral character of Barnabas Bidwell, Esq, one of the sitting Members for the said incorporated Counties, being altogether founded on ex parte statements, and alluding to transactions beyond the jurisdiction of this House, and respecting which no compulsory process for the attendance of exculpatory testimony could issue therefrom, and that as the said reports and occurrences are not, even if true, legal disqualifications for a seat in this House, the same cannot be taken into consideration or decided upon under the Act of this Province for the Trial of Controverted Elections.

In amendment, Mr. Attorney General, seconded by Mr. Jones of Grenville, moves that after the words "counties" in the original motion, the remainder of the Resolution to the words "are not even if true" be expunged, and that after the word "House" the words "and that" be inserted.

On which the House divided, and the yeas and nays being taken were as follows.

. . . . . .

The question was carried in the affirmative by a majority of twenty-seven.

On the original question as amended being put the House divided, and the yeas and nays being taken were as follows:

. . . . . .

The question was decided in the affirmative by a majority of three, and it was resolved accordingly

The House then adjourned till ten o'clock to-morrow.

3 January, 1822[2]

Agreeably to the order of the day, the House proceeded in the trial of the Lennox and Addington Petition.

Mr. McMartin, seconded by Mr. Jones of Grenville moves that it be resolved that the allegations set forth in the Petition of Timothy Storing and others Freeholders of the Incorporated Counties of Lennox and Addington, against the Election of Barnabas Bidwell, Esq, sitting Member for the said Counties, having been proved at the Bar of the House, the said Election is hereby declared to be void.

In amendment, Dr. Baldwin, seconded by Mr. Willson of Prince Edward, moves that after the word " that " the whole of the original motion be expunged, and there be inserted the following words, " it be resolved that the allegations in the Petition of Timothy Storing and others have not been proved in such manner as in the judgment of the House to render the Election of Barnabas Bidwell void."

On which debates ensued.

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[1] *Journals of Assembly, Upper Canada, pp. 212-214.*
[2] *Ibid, p. 215.*

4 January, 1822[1]

Dr. Baldwin's amendment was then put as follows.

Dr. Baldwin, seconded by Mr. Willson of Prince Edward, moves that after the word "that" the whole of the original motion be expunged, and that there be inserted the following words, "it be resolved that the allegation in the Petition of Timothy Storing and others have not been proved in such manner as in the judgment of this House to render the election of Barnabas Bidwell void .....

.....

The question was carried in the negative by a majority of one.

Mr. Gordon in amendment, seconded by Mr. Attorney General, moves that after the words "resolved that" in the original motion all the remainder be expunged and the following inserted "sufficient of the allegations contained in the Petition of Timothy Storing and others, Freeholders of the Incorporated Counties of Lennox and Addington, complaining of the return of Barnabas Bidwell, Esquire, Sitting Member for those Counties, having proved at the Bar of this House to void the Election of the said Barnabas Bidwell, Esq, the same is hereby declared void."

On which the House divided, and the yeas and nays being taken were as follows .....

.....

The question was carried in the affirmative by a majority of one.

The original question as amended was then put and carried.

Mr. Attorney General, seconded by Mr. Ruttan, moves that it be resolved that a new Writ be directed to issue for the election of a Member to represent the Incorporated Counties of Lennox and Addington, in the place of Barnabas Bidwell, Esq, whose election has been declared void.

Which was ordered.

STATUTES OF UPPER CANADA.
2 Geo IV, Cap 4 (second session).

An Act to render ineligible to a Seat in the Commons House of Assembly of this Province, certain descriptions of Persons therein mentioned.[2]

[Passed 17th January, 1822]

Preamble. Whereas, the remote situation of this infant colony from the mother country, and its proximity to the United States of America, require that this House of Assembly should be free from a foreign influence, which might endanger the best interests of the Province: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of this Province of Upper Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parlia-

[1] *Journals of Assembly, Upper Canada, pp. 220-221.*

[2] *Upper Canada Statutes 1820-30, pp. 88-89.* The provisions of this Act were re-embodied in 4 Geo. 4 Cap 3, wherein the several earlier statutes governing the qualifications of members and voters were repealed, and the law consolidated. See *below p. 206.*

ment of Great Britain, entituled "An Act to repeal certain parts of an Act passed in the fourteenth year *of His Majesty's Reign,* entituled 'An Act for making more effectual provision for the Government of the Province of Quebec, in North America, and to make further provision for the Government of the said Province,'" and by the authority of the same, That from and after the passing of this Act, no person or persons now resident within this Province, or who shall or may at any time hereafter come into this Province to reside, who shall or may have taken the oath of abjuration against His Majesty's Government, or who shall have been a member of the senate or house of representatives of the said United States, or any of the said United States respectively, or who shall or may have held any office in any of the executive departments of state of the said United States or State respectively, or who shall be, or may have been convicted in any foreign country, of felony or of any offence, which if committed in this Province, would subject the offender to infamous punishment, shall be capable of being elected to serve as a member in the House of Assembly of this Province, any law, usage, or custom, to the contrary notwithstanding.

Disqualifications of certain persons to serve in the House of Assembly.

II. *And be it further enacted by the authority aforesaid,* That it shall and may be lawful, for the returning officer, at any election hereafter to be had, of a Member to represent in the said House of Assembly, any county, town, or riding, within this Province, and he is hereby required, at the instance and request of any one elector of the county, town, or riding, in which such Election shall be held, to render to every Candidate for the said Election the following oath:— "I, A.B. do sincerely and solemnly swear, that during my residence in the United States of America, I have not taken or subscribed any Oath of Abjuration of Allegiance to the Crown of Great Britain; and further, that during my said residence, I have not held the office or appointment of Senator or Member of the House of Representatives of the United States, or of either of the said United States respectively, or held or enjoyed any office in any of the Executive Departments of State in the said United States or State respectively; so help me God."

Oath to be tendered to any Candidate by Returning Officer.

III. *And be it further enacted by the authority aforesaid,* That if any person shall wilfully forswear himself in the oath taken by virtue of this Act, he shall be deemed guilty of wilful and corrupt perjury, and may be punished accordingly.

Persons taking false oath subject to the penalties of perjury.

PUBLIC COMMENT ON THE ALIEN QUESTION.

KINGSTON, (U.C.) March 12. [1822]

For the Upper Canada Herald.[1]

A more interesting question was never agitated than that which has lately been started, whether all the inhabitants of this Province who were either resident in the United States at the treaty of peace of 1783, or born there afterwards of British-born parents, are notwithstanding their residence here for seven years, to be now deemed aliens, ineligible as members of Assembly, unqualified to vote at elections, and incapable of inheriting lands, or even holding them by purchase, except as tenants at the will of the Crown.

They have heretofore not only considered themselves, but have been uniformly considered and treated by his Majesty and by the Provincial authorities and statutes, as subjects with respect both to the enjoyment of rights and the performance of duties. As such they have, from the beginning, been permitted to take and hold lands, by descent as well as purchase, and to elect and be elected after seven years residence. As such, also, they were required by law to serve, and did serve, in the militia, in defence of the Province during the late war, in common with European and Canadian born subjects, and are still, without distinction, enrolled and commissioned in the militia.

The new doctrine, if established and carried into execution, will have a most serious retrospective effect. It will disfranchise a large proportion of the freeholders of every district throughout the Province, to their grievous disappointment and injury; and will, in their view at least, be a breach of the public faith, under which many of them have received grants immediately from the crown, and all of them have been encouraged to lay out their money and labour in the purchase and improvement of land. Government surely did not intend to hold out false encouragement to American settlers; and it would be no less strange than unfortunate, if all parties, from his Majesty's Ministers and Representatives down to the settlers themselves, should be found to have been acting under a mistake on this essential point, for more than thirty years. Yet, if such is to be the ultimate decision, the sooner it shall be ascertained, the better; that all, who are to be affected by it, may know their situation, in order to determine what course to take, whether to unite in some application for relief, to remain in a state of disfranchisement, or to dispose of their property with as little sacrifice as possible, and remove to some Province or State, where they can hold land securely, and enjoy the rights of subjects, which they expected to enjoy here.

[1] *Quebec Gazette, 4 April, 1822.*

INSTRUCTIONS TO GOVERNORS.

Assembly of Lower Canada to Governor, 29 Dec., 1821.[1]

On Motion of Mr. *Cuvillier*, seconded by Mr. *Bureau*,

Resolved, That an Humble Address be presented to His Excellency the Governor in Chief, praying His Excellency will be pleased to cause to be laid before this House:

A Statement of the proper provision for the support of the Government of the Province of *Quebec* as fixed by the Royal Instructions previous to the seventeenth December, one thousand seven hundred and ninety-two.

A statement of ditto for the Province of *Lower-Canada* as fixed by the Royal Instructions at the latest period previous to the thirty-first day of December one thousand seven hundred and ninety-seven.

A statement of ditto as fixed by the Royal Instructions at the latest period before the tenth day of February one thousand eight hundred and ten.

A statement of ditto as fixed by the Royal Instructions at the latest period before the seventh day of January one thousand eight hundred and eighteen.

Dalhousie to Assembly.[2]

DALHOUSIE, Governor.

In answer to the Address of the House of Assembly of the twenty-ninth December last, the Governor in Chief feels it his duty to decline to lay the Royal Instructions or any part of them before the House for Public Discussion, considering them to be confidential Instructions from His Majesty to His Representative for the time being.

D. G.

Castle of St. Lewis,
Quebec, 8th January 1822.

EXPENDITURE OF PUBLIC MONEY, LOWER CANADA, 1822.

Resolutions of Assembly, Lower Canada, 12 January, 1822.[3]

Resolved, That it is the opinion of this Committee, That the application of any sum or sums of Money already levied, or which hereafter may be levied on His Majesty's Subjects of this Province, otherwise than such application is or may be directed to be made by the express provision of Law, is a breach of the Privileges of this House, and subversive of the Government of this Province, as established by Law.

Resolved, That it is the opinion of this Committee, That this House will hold personally responsible his Majesty's Receiver General of this Province, and every other person or persons concerned, for all Monies levied on His Majesty's Subjects in this Province, which may have legally come into his or their hands, and been paid over by him or them, under any authority whatsoever, unless such payment be, or should be authorized by an express provision of Law.

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[1] *Journals of Assembly, Lower Canada, 1821-22, p. 39.*
[2] *Journals of Assembly, Lower Canada, 1821-22, p. 65.*
[3] *Ibid, pp. 84-85.*

Resolved, That it is the opinion of this Committee, That it is expedient to grant an Act of Indemnity for all Expenditures of Public Monies made by and under the authority of His Majesty's Executive Government in this Province, for and during the years one thousand eight hundred and nineteen and one thousand eight hundred and twenty-one, to the extent of the sums voted by this House for the Expenditure of the said years respectively.

Resolved, That it is the opinion of this Committee, That the sums of Money which this Province was liable to contribute towards the payment of Interest on Army Bills, under the Provincial Statute of fifty-second *George* III. intituled, "An Act to facilitate the circulation of Army Bills;" at the rate of fifteen thousand pounds per annum, have been paid and discharged by this Province, up to the seventh December one thousand eight hundred and fifteen, the day on which the Interest on the said Bills ceased and determined, in virtue of the Proclamation of His Excellency the Administrator of the Government, issued for calling in the said Army Bills, in pursuance of and agreeably to the provisions of the said Statute.

Resolved, That it is the opinion of this Committee That this Province is not indebted in the sum of twenty-five thousand nine hundred and seventeen pounds twelve shillings and four pence sterling, nor in any other sum of Money whatever, for arrears of Interest on Army Bills.[1]

Resolved, That it is the opinion of this Committee, That the sums granted and appropriated for any special service should be applied, by the Executive Power, only to defray the expenses of that service, and that the application of any surplus of funds to uses for which they were not appropriated, is a misapplication of the public Money, a daring breach of public Trust, a violation of the Rights and Privileges of this House, and subversive of the Government of this Province, as established by Law.

Resolved, That it is the opinion of this Committee, That it is expedient to grant an Act of Indemnity for the Disbursements made and incurred by the Executive Government of this Province, for and during the year one thousand eight hundred and twenty, not exceeding the sums of money voted by this House, for the expenditure of the year one thousand eight hundred and nineteen.

Resolved, That it is the opinion of this Committee, That the Acts of Indemnity which this Committee are of opinion should be granted, shall not form nor be drawn into precedent for the future.

[1] These were the Army Bills which were issued during the War of 1812. The Assembly had appropriated £15,000 annually to pay interest, but on December 7, 1815 the Government declared itself willing to redeem the bills and that interest would therefore cease. In the public accounts for 1815 a charge of £20,301.7.4 was made to pay the interest from 1 August 1814 to 7 Dec. 1815, showing that the account was closed. None the less the Bills were not turned in, and in 1818, the Hon. John Young, Chairman of the Board of Audit, declared that the grant of £15,000 per annum still held good. The Assembly refused to agree and their stand was upheld by W. B. Coltman, who succeeded Young in 1819. The British Treasury laid a claim for this against the Province but relinquished it in 1823. See *Davidson to Wilmot Horton, 22 August 1823, Q. 167, pp. 367-369.* For a memorandum on this subject see also *Q. 163, pp. 315-317.*

Dalhousie to Assembly, Lower Canada, 6 February, 1822.[1]

DALHOUSIE, Governor.

The Governor in Chief, at the close of the last Session, pointed out the difficulties which would follow from the want of the usual appropriations of public Monies to meet the public Expenditure, and particularly stated that the Government would be left without the pecuniary means which its exigencies would indispensably require, if he did not advance them on his own personal responsibility.

Accordingly the Governor in Chief did so advance the difference between the amount of the Royal Revenue which was placed at his disposal, and the total amount of the civil Expenditure of the Province, and he called upon the Assembly by Message of the eighth of January last to make good this difference.

The Governor in Chief therefore has not put in question the constitutional principle which directs the application of public Monies, by the Governor in Chief, to the purposes for which they are appropriated; he has relied with confidence upon the faith of the Assembly, which was pledged to pay the civil Expenditure of the Province, and in the firm belief that he should act in conformity to the wishes of the Legislature, he took upon himself this great responsibility in order to prevent consequences equally distressing to individuals and ruinous to the general interests of the Province.

By the proceedings of the present Session, circumstances are materially changed. It will not now be in the power of the Governor in Chief to make further advances, nor will it be consistent with his duty to venture a greater stretch of responsibility. He therefore informs the Assembly that he will apply the Territorial and Casual Revenues, Fines, Rents, and profits which were reserved to and belonged to His Most Christian Majesty before and at the time of the conquest and surrender of *Canada* to His late Majesty the King of *Great Britain*, the monies raised by Statutes of the Imperial Parliament, and the sum of Five Thousand Pounds sterling, raised by the Provincial Statute, thirty fifth *George* the Third, Chapter nine, towards defraying the Expenses in support of His Majesty's Civil Government and of the administration of Justice in this Province, according to the appropriations of the said Statutes.

Should there be any surplus remaining after the payment of these Expenses, the Governor in Chief will then apply that surplus towards defraying the expenses of such local Establishments and objects of public charge as form no part of His Majesty's Civil Government, and are not connected with the administration of Justice.

The Governor in Chief does not, however, flatter himself that there will be any such surplus; he therefore calls upon the Assembly for the Supply necessary for defraying the several Expenses of those different local Establishments and objects of public charge to which he has referred, and which appear by the Expenditure of last year, which he has caused to be laid before the Assembly in this Session, will amount to about Thirty-five thousand pounds, including the Expenses of the Legislature and of the Collection of the public Revenues.

[1] *Journals of Assembly, Lower Canada, 1821-22 pp. 155-156.*

The Governor in Chief deems it to be his indispensable duty to add that, if these Supplies are not granted, he will have no means to defray the Expenses of these local establishments and objects of public charge, except where payment has been provided by specific appropriations.

Castle of St. Lewis,
Quebec, 6th Feby. 1822. } D.G.

DALHOUSIE'S SPEECH ON PROROGATION OF ASSEMBLY, 18 FEBRUARY, 1822.[1]

On a full consideration of the situation of affairs, and of the peculiar circumstances which have led to it, I am satisfied that no benefit to the Public can be expected from a continuance of this Session, and I have therefore determined to prorogue the Provincial Parliament.

I deeply regret, that it should have been thought proper to have recourse to the unusual practice of withholding the necessary Supplies. Whatever may have been the intention of that measure, I am happy to state, that it will not at all affect the Administration of His Majesty's Civil Government, or of Justice, or the Officers employed in either of those departments. The effects will fall entirely upon the local Establishments, and will be felt highly injurious to the interests of His Majesty's loyal and faithful Subjects in this Province.

The Proceedings which have led to this measure, have afforded me the greatest satisfaction of knowing that the Legislative Council of this Province duly appreciate the important duties of their elevated station.

Their conduct has assured me that His Majesty may rest confident of their firm support in maintaining the true principles of the Constitution, and the just Rights of the Crown, so also it will be the object of my constant study to maintain these, and to employ the powers intrusted to me by His Majesty to the only end for which they were given—the good of his Subjects.

CIRCULAR LETTER SENT TO THOSE WHOSE SALARIES AND CONTINGENCIES WERE REGARDED AS PAYABLE UPON THE LOCAL ESTABLISHMENT.[2]

CIRCULAR. EXECUTIVE COUNCIL OFFICE,
QUEBEC, May, 1822.

I am directed by His Excellency the Governor in Chief to inform you that [*here is inserted the nature of the sum hitherto allowed for the expenditure in question*] and paid by Warrant No. [ ] of this date, for the last half year, being considered to be one of those objects of Public Charge which form no part of His Majesty's Civil Government, or of the administration of Justice in this Province, and being one also for which no means of payment, by appropriation, have been provided, either by the Imperial Parliament or by the Provincial Legislature,

His Excellency regrets that he will not have it in his power to issue any Warrant for the payment of this allowance in future—until Funds shall be provided for its discharge—

I am

[1] *Journals of Assembly, Lower Canada, 1821-22, pp. 189-190.*
[2] *Lower Canada Sundries, S. 15, No. 4.*

PETITION TO ASSEMBLY FROM EASTERN TOWNSHIPS 1822.[1]

A Petition of divers Inhabitants of the Eastern Townships, whose names are thereunto subscribed, was presented to the House by Mr. *Davidson*, and the same was received and read, setting forth, That the Inhabitants of the Eastern Townships again approach the Legislature to state the grievances under which they continue to suffer, notwithstanding the reiterated representations made in their numerous Petitions for relief. The Petitioners submit in the first place, as the most serious and unconstitutional grievance that from the great extent of the Counties and the absolute impossibility of attending the places of Election (which are all remote from the Townships,) the people are deprived of their just and undoubted right of equal and virtual representation in the Legislature of the Province. To this evil they attribute the numerous discouragements under which they labour; and the neglect of their former supplications for redress. The unprotected situation of Persons and Property, arising from the distance of the Courts of Civil and Criminal Judicature, from the want of means of securing Offenders, and from the ruinous expenses attending Trials in the Courts of the Districts as at present laid out. The uncertainty and hazard attending the purchase of Landed Property, and the consequent litigation and inducements to fraud, proceeding from the want of Offices for enregistering the transfers and mortgages of real Estates. The general want of Internal Communications, and of Roads to the Capital and to the Markets of the Province, arising altogether from the inefficiency of the existing Road Laws, inapplicable in the present state of Property in this Country, expensive to establish, and oppressive in operation. The want of local Regulations of Police, for adjusting Weights and Measures, and other minor objects interesting the Internal Traffic of the Country. The discouragement to the Agriculture and Commerce of the Province, arising from the unrestricted introduction of Cattle and Manufactures into the Townships from the United States. The Petitioners most earnestly entreat the attention of the House to apply such remedy as may appear expedient, to the grievances complained of, and they would with all due deference to its superior wisdom, suggest the following measures for the consideration of the House, viz. First, the imposition of a Duty of Seventeen and a half per Cent on all Cattle imported from the United States into the Province, and the erection of a Port of Entry and Custom House in a Central Part of the Townships. Second, the establishment of Police Regulations and of Sworn Meters in each Township. A modification of the existing Road Act, or preferably, a new Law accommodated to the peculiar tenure and circumstances of the Lands in this Country. Fourth, the Establishment of a Registry Office for each District or County, comprehending all Sales, Transfers and Mortgages of every description of Landed Property, the expenses of the same to be defrayed by the fees on enregisterments. Fifth, A new division of the Country, by the erection of one or more new Districts,[2] the erection of correspondent Gaols and Court Houses, and the establishment of Courts of Justice within the reach of all the Inhabitants of the Townships. And lastly, the Petitioners implore the

[1] *Journals of Assembly, Lower Canada, 1821-1822, pp. 73-74.* A similar petition was sent to the Council. For the deliberations upon it, see *Lower Canada, State Book, J., pp. 240-242.*

[2] The Judicial District of St. Francis was erected in 1823.

House to adopt immediate measures for admitting the People of the Townships to the exercise of their imprescriptible rights as British Subjects, in the election of Representatives to the Legislature, by assigning to the Townships such number of Members as may be proportionate to the importance of the Country, and the extent of its population.

ALIENS.

P. Maitland to Bathurst.[1]

N° 60.

Upper Canada, York,
15th April 1822.

My Lord,

In my dispatch of the [2] I did myself the honor to solicit Your attention to a Bill passed the last Session of the Provincial Legislature to disqualify certain descriptions of persons therein mentioned from sitting in the House of Assembly, and I referred Your Lordship to the Attorney General, to whose hands my letters were committed, for a history of the proceedings which led to that enactment.

Your Lordship will therefore probably have a general Knowledge of the Circumstances attending the Election of Mr Bidwell, the Petition against his return, and his final rejection by the Assembly.

A new Election has since taken place, and a son of Mr. Bidwell's who came into the Province, some years ago with his father was proposed as a Candidate, but refused by the returning Officer who considered him an Alien.

The disqualifications which had been alledged against the elder Bidwell were placed under two heads,–the first comprised his having held Office in the United States, sworn allegiance to the Republic,– and abjured the King by a Special Oath.– Under the second it was declared, he had been guilty of shameful malversation in Office, which would have subjected him to ignominious punishment had he not fled into this Province to escape it.

All the Allegations were, I believe, equally well substantiated. It was however the matter arranged under the second head which occasioned his expulsion from the Assembly, by a Majority of a single voice; that body having declared by a previous vote, his competence in point of legal qualification to maintain his Seat in that House.

It is of importance to notice this decision because it is known to be the intention of the son to present a petition on the meeting of Parliament, a new Election founded on the Returning Officer's refusal to admit him as a Candidate on the plea of his being an Alien.

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[1] *Q. 331, pp. 90-94.*

[2] On 22 January, 1822, Maitland wrote to Bathurst, declaring that the Attorney General, John B. Robinson, who was going to England, was entrusted with a memorandum on various subjects of importance. *Q. 331, p. 3.*

As the only circumstance which was considered to disqualify the father, does not apply to the son, if the House of Assembly is consistent, it must decide in his favor; yet, I cannot but apprehend such a decision would be at variance with the British Statutes, and likely to undermine the security of this part of His Majesty's North American Dominions.

That His Majesty's Government will entertain a similar apprehension may, I think be fairly inferred from the tenor of your Lordship's dispatch, of the 30th November 1817.

At the same time the Report of the Attorney General which seems to have been transmitted to Your Lordship in reply to that dispatch, abundantly shews how dangerous it would be to act up to the Spirit of the British Statutes at this period, without some previous enactment of the Imperial Parliament to secure a numerous class of Inhabitants in that property which they have now been permitted to enjoy for so long a period unmolested, and who, although they may not have complied with all the formalities required by the Acts respecting naturalization. (which I believe none of them have done.) Yet by a long residence, and by faithful and valuable services during the late War, have given satisfactory proof of their attachment to the British Government and constitution. There is a pretty general feeling for the situation of these people, which has of late been studiously kept alive by designing persons to favor their own views, and I am persuaded it had no small degree of influence on the opinions of the Assembly.

The agitation of the present question naturally keeps the mind of those inhabitants whose situation I have alluded to, in a state of uneasiness, and at the same time diminishes their confidence in the protection of Government.

Under these Circumstances, I cannot refrain from expressing a hope that it may be found practicable to give them a legal title to the property they hold, and by some explanatory and decisive enactment to exclude Aliens from holding seats in the Assembly.–avert the probability of that House's deciding again on this important subject in a manner which His Majesty's Government will consider, I apprehend, as little consistent with the true spirit of the British Statutes, as it is with the Security of this part of His Majesty's Dominions.

I have the honor to be,
My Lord,
Your Lordship's
Most obedient
humble Servant

P. MAITLAND.

The Earl Bathurst.K.G.
&c. &c. &c.

OPERATION OF CORN LAWS

Bathurst to Dalhousie.[1]

Downing Street
14th Jan 1822

My Lord,

I have laid before His Majesty the several Petitions of the Inhabitants of Quebec, the County of Cornwallis, and County of Devon and have fully considered the Memorials from the Committees of Trade of Quebec and Montreal forwarded to me in Your Lordships Letters of the 13th Sept, 15th and 21st Nov 1821, entreating that I would solicit His Majesty's permission to recommend to the consideration of Parliament the calamitous state of the Canadas, with the view of suggesting an alteration of the Corn Bill of 1815 as to the importation prices from that Colony.[2]

However deeply I may regret the existence of such distress I cannot but feel that the present moment of extreme depreciation of Agricultural Produce in the Mother Country is not the most favorable one to recommend to the consideration of Parliament any alteration in the established Law in favor of Canada, from whence an exportation of Wheat may take place (and of other Corn in proportion) whenever the price of the Quarter of Wheat in the Home Market shall rise to sixty seven Shillings, which is thirteen Shillings below the rate of Import permitted to any other part of the World.

I have the Honor to be
My Lord
Your Lordships most obedt
Humble Servant

BATHURST

Lt General
The Earl of Dalhousie
G.C.B.
& & &

Endorsed Downing Street 14 Jany 1822
From
Earl Bathurst
In answer to Merchants & others Petition
respecting the restriction on export of wheat &c

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[1] *G. 12, pp. 3-4.*

[2] The effect of the Corn Laws was pernicious in both Upper and Lower Canada. Numerous addresses were passed in hope of relief. In a private letter to Bathurst, 24 Feb., 1822, Lord Dalhousie said. "The hopes of the Province are anxiously intent upon some relief by a free admission of our Agricultural Produce in payment for the British Manufactures we import, at present the distress is very general." *Dalhousie Papers, Vol. 5.*

APPOINTMENT OF PROVINCIAL AGENT.

Resolutions of Legislative Council, Lower Canada,

14th January 1822.[1]

Resolved, That neither the Legislative Council nor the Assembly possess any Legislative power or authority, but what is vested in them by the Act of the 31st Geo. III. cap. 31, commonly called the Constitutional Act, to be exercised by each House only in concurrence with the other, and sanctioned by the King's Most Excellent Majesty, through the Governor, Lieutenant-Governor, or Person administering the Government of this Province.

Resolved, That neither the Legislative Council nor the Assembly possess any power of appointing to office; but the same, by the principles and practice of the Constitution, is inherent in and exercised by the Crown.

Resolved, That it is the bounden duty of the Legislative Council, as a co-ordinate and permanent Branch of the Legislature, established by the abovesaid Act, to oppose the assumption of Legislative power or authority, unwarranted by the Constitution of this Province, whensoever attempted.

Resolved, That the Resolutions of the Assembly, requesting *Joseph Marryat*,[2] Esquire, to act as an authorized Agent for this Province, to attend to the interests of this Colony, and communicate with His Majesty's Ministers on all points relating thereto, as he may be instructed by the Assembly, or as occasion may require, are a dangerous assumption of Legislative power by the Assembly alone, without the concurrence of the other Branches of the Legislature, and an attempt at appointment to office, in direct breach and violation of the Constitution of the King's Prerogative, and of the rights and privileges of this House, and tend to subvert the Constitution of this Province.

Resolved, That a copy of the preceding Resolutions be presented to His Excellency the Governor in Chief, with an humble Address, to assure His Excellency of the fixed determination of this House to support the Constitution of this Province, as by Law established—the Prerogative of the Crown—and the Independence of the Legislative Council; and to request that His Excellency will be pleased to lay these resolutions and assurances of the Legislative Council at the foot of the Throne, in such way as His Excellency may see fit.

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[1] *Journals of Council, Lower Canada, 1822, p. 28.*

[2] Marryat, who had been requested by the Assembly to act as their agent, declined to do so on the ground that unless the appointment was officially made, his representations would not carry weight. The *Quebec Gazette, 17 June, 1822,* carried the following notice, "We can state with certainty that Mr. Marryat has declined to act upon the nomination made by the House of Assembly during last Session. Mr. Marryat has been highly gratified by this mark of perfect confidence which the House of Assembly have had in his integrity and talents, but he at the same time remarks that without the concurrence of the three branches of our Legislature he could not communicate with the Colonial Department and His Majesty's Ministers as an accredited agent; and would be unable to act with that efficiency which the situation demands."

MAITLAND TO BATHURST.[1]

N° 48

UPPER CANADA, YORK.
2nd February 1822.

MY LORD,

I thought proper to assent to the Repeal of the Bill providing for the appointment of a Provincial Agent, that situation being just now vacated by the death of Mr. Halton: because it appeared to me advisable that a Bill containing the following unconstitutional clause, should not remain on the Statute Book.

"That the tenor of the Office of Provincial Agent shall be during good behaviour, and that it shall not be lawful to remove him therefrom, excepting on the joint Address of the Legislative Council and House of Assembly respectively, to the Governor, Lieutenant Governor, or person administering the Government of this Province."

I have the honor to be,
My Lord,
Your Lordship's
Most Obedient
Humble Servant

P. MAITLAND.

The EARL BATHURST K.G.
&c. &c. &c.

COURT OF APPEALS, LOWER CANADA.

IRVINE TO DALHOUSIE.[2]

MAY IT PLEASE YOUR EXCELLENCY,

Your Lordship having done me the honor to inform me that You had issued a Commission appointing me to set as President in the Court of Appeals in Cases appealed from the Court of Kings Bench for the District of Quebec, wherein the Hon'ble The Chief Justice, who is one of the Judges of that Court, is by Law inhibited from presiding,– And, Your Lordship having been also pleased to signify, that You left me perfectly at liberty to act under that Commission or otherwise, as my inclination might dictate,– I, in consequence consider myself released from the obligation, which under His Majesty's Writ, it would have been my bounden duty to obey, and comply with, to the best of my ability—and therefore beg, that I may be permitted to decline acting in a Situation the Duties of which, I, as an unprofessional Man, am conscious of my incompetency to perform:—

Fourteen Years experience, during a regular and constant attendance at four Terms in each year, as a Member of that Court, has afforded me abundant opportunity of witnessing and severely feeling the painful Duties imposed on Gentlemen forming a Court, as in the present instance would be the Case, composed of Members of His Majesty's Executive Council, not one of whom would be a professional Man:—

[1] *Q. 331, p. 33.* Referring to 2 Geo. IV, Cap. 10, second session.
[2] *Internal Correspondence, Lower Canada, S. 157 (244).*

I hope, my Lord, I may be pardoned when under these circumstances I beg leave to decline setting as President in a Court which is strictly bound by the Rules of Law, without possessing any equitable Jurisdiction whatever—and, that Court to revise the Judgments given by His Majesty's Chief Justice of the Province and three other of the Justices of His Majesty's Court of King's Bench.[1]

Permit me to have the honor of subscribing myself

Your Lordship's
most devoted
faithful Servant

JAMES IRVINE

Quebec 27th April 1822.

The Right Honorable
The Earl of Dalhousie, G.C.B.
Governor in Chief
&c &c &c

CHANGE IN NAVIGATION ACTS, 1822.[2]

Imperial Statute 3 GEORGE IV, CAP. XLIV.[3]

An Act to regulate the Trade between His Majesty's Possessions in *America* and the *West Indies*, and other Places in *America* and the *West Indies*. [24th *June*, 1822.]

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Articles in Schedule (B.) may be imported from North or South America or West Indies, under Dominion of European Sovereign, &c. into Ports in Schedule (A.) either in British Vessels or Vessels of the Country.

III. And be it further enacted, That from and after the passing of this Act, it shall be lawful to import into any of the Ports enumerated in the Schedule annexed to this Act, marked (A.), from any Foreign Country on the Continent of *North* or *South America*, or from any Foreign Island in the *West Indies*, whether such Country or Island as aforesaid shall be under the Dominion of any Foreign European Sovereign or State, or otherwise, the Articles enumerated in the Schedule annexed to this Act marked (B.), either in *British* built Ships or Vessels owned and navigated according to Law, or in any Ship or Vessel *bonâ fide* the Built of and owned by the Inhabitants of any Country or Place belonging to or under the Dominion of the Sovereign or State of which the said Articles are the Growth, Produce or Manufacture, such Ship or Vessel being navigated with a Master and Three fourths of the Mariners at

[1] A regular Court of Appeals for Lower Canada was established in 1843. The Court of Appeals of Upper Canada was created in 1849.

[2] The two Acts given here mark the beginning of the change in policy under which the Navigation Acts were relaxed. They form part of the Wallace-Robinson Code. In this connection see also the Canada Trade Act, p. *106*.

[3] *Statutes at Large, United Kingdom, 60 Geo. 3-3 Geo. 4, pp. 704-710.*

least belonging to such Country or Place; or in any *British* built Ship or Vessel which has been sold to and become the Property of the Subjects of any such Sovereign or State, such Ship or Vessel last mentioned being also navigated with a Master and Three fourths of the Mariners at least belonging to such Country or Place: Provided always, that no Articles enumerated in the said Schedule shall be imported in any Foreign Ship or Vessel; or in any *British* built Ship or Vessel so sold as aforesaid, unless shipped and brought directly from the Country or Place of which they are the Growth, Produce or Manufacture.

Certain Articles may be exported direct from Ports in Schedule (A.) in such British or Foreign Vessels on certain Conditions.

IV. And be if further enacted, That it shall be lawful to export in any *British* built Ship or Vessel owned and navigated according to Law, or in any Foreign Ship or Vessel as aforesaid, or in any *British* built Ship or Vessel so sold as aforesaid, from any of the Ports enumerated in the Schedule annexed to this Act, marked (A.), any Article of the Growth, Produce or Manufacture of any of His Majesty's Dominions, or any other Article legally imported into the said Ports, provided that the said Articles when exported in any such Foreign Ship or Vessel, or in any *British* built Ship or Vessel so sold as aforesaid, shall be exported direct to the Country or State in *America* or the *West Indies* to which such Ship or Vessel belongs as aforesaid, and before the Shipment thereof, Security by Bond shall be given to His Majesty, His Heirs and Successors, in a Penalty equal to Half the Value of the said Articles; such Bond to be entered into by the Master and Exporter before the Collector or other Chief Officer of the Customs of such Colony, Plantation or Island, for the due landing the said Articles at the Port or Ports for which entered, and for producing a Certificate thereof within Twelve Months from the Date of such Bond, under the Hand and Seal of the *British* Consul or Vice Consul resident at the Port or Place where the said Articles shall have been landed; but in case there shall not be any such Consul or Vice Consul there resident, such Certificate to be under the Hand and Seal of the Chief Magistrate, or under the Hand and Seal of Two known *British* Merchants residing at such Port or Place; but such Bond may be discharged by Proof on Oath by credible Persons, that the said Articles were taken by Enemies, or perished in the Seas: Provided always, that nothing herein contained shall be construed to permit or allow the Exportation of any Arms or Naval Stores, unless a Licence shall have been obtained for that Purpose from His Majesty's Secretary of State; and in case any such Articles shall be shipped or waterborne for the Purpose of being exported contrary to this Act, the same shall be forfeited, and shall and may be seized and prosecuted as hereinafter directed.

Bond by Master and Exporter for landing, &c.

No Exportation of Arms or Naval Stores, without licence.

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On Importation of Articles into Ports in Schedule (A.) certain Duties in Schedule (C.) to be paid for use of Colonies.

VII. And be it further enacted, That from and after the passing of this Act, there shall be raised, levied, collected and paid unto His Majesty, His Heirs and Successors, upon the several Articles enumerated or described in the said Schedule marked (C.), imported or brought into any of the Ports enumerated in the Schedule marked (A.), from any such Foreign Island, State or Country under the Authority of this Act, the several Duties of Customs as the same are respectively inserted or described and set forth in Figures in the said Schedule annexed to this Act marked (C.), and the same shall be under the Management of the Commissioners of the Customs in *England*, and shall be raised, levied, collected, paid and recovered in such and the like manner and form, and by such and the like Rules, Ways, Means and Methods respectively, and under such Penalties and Forfeitures, as any other Duties now payable to His Majesty on Goods imported into any of the Islands, Plantations, Colonies or Territories belonging to or under the Dominion of His Majesty in *America* or the *West Indies*, are or may be raised, levied, collected, paid and recovered by any Act or Acts of Parliament now in force, as fully and effectually to all Intents and Purposes as if the several Clauses, Powers, Directions, Penalties and Forfeitures relating thereto, were particularly repeated and again enacted in the Body of this Act; and the Produce of such Duties shall be paid by the Collector of the Customs to the Treasurer or Receiver General of the Colony, Province or Plantation in which the same shall be respectively levied, to be applied to such Uses and Purposes as may be directed by the Authority of the respective General Courts or General Assemblies of such Colonies, Provinces or Plantations.

How recovered.

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How Penalties and Forfeitures recovered.

XX. And be it further enacted, That all Penalties and Forfeitures imposed by this Act shall and may be respectively prosecuted, sued for and recovered, and divided in *Great Britain, Guernsey, Jersey* or the *Isle of Man*, or in any of His Majesty's Colonies or Islands in *America*, in the same Manner and Form, and by the same Rules and Regulations in all Respects, in so far as the same are applicable, as any other Penalties and Forfeitures imposed by any Act or Acts of Parliament made for the Security of the Revenue of the Customs, or for the Regulation or Improvement thereof, or for the Regulation of Trade or Navigation, and which were in force immediately before the passing of this Act, may be respectively prosecuted, sued for, recovered and divided in *Great Britain, Guernsey, Jersey* or the *Isle of Man*, or in any of His Majesty's Colonies or Islands in *America*.

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SCHEDULES TO WHICH THIS ACT REFERS

SCHEDULE (A).

LIST OF FREE PORTS

Kingston, Savannah Le Mar, Montego Bay, Santa Lucia, Antonia, Saint Ann, Falmouth, Maria, Morant Bay	Jamaica.
Saint Geerge..	Grenada.
Roseau..	Dominica.
Saint John's..	Antigua.
San Josef..	Trinidad.
Scarborough..	Tobago.
Road Harbour..	Tortola.
Nassau..	New Providence.
Pitt's Town..	Crooked Island.
Kingston..	Saint Vincent.
Port St. George and Port Hamilton..	Bermuda.
Any Port where there is a Customs House..	Bahamas.
Bridgeton..	Barbadoes.
St. John's, St. Andrew's.. ..	New Brunswick.
Halifax..	Nova Scotia.
Quebec..	Canada.
St. John's..	Newfoundland.
George Town..	Demarara.
New Amsterdam..	Berbice.
Castries..	St. Lucia.
Basseterre.	St. Kitts.
Charles Town..	Nevis.
Plymouth..	Montserrat.

SCHEDULE (B).

Asses.	Grain of any Sort.	Oats.
Barley.	Garden Seeds.	Peas.
Beans.	Hay.	Potatoes.
Biscuit.	Hemp.	Poultry.
Bread.	Heading Boards.	Pitch.
Beaver, and all Sorts of Fur.	Horses.	Rye.
	Hogs.	Rice.
Bowsprits.	Hides.	Staves.
Calavances.	Hoops.	Skins.
Cocoa.	Hardwood or Mill Timber	Shingles.
Cattle.		Sheep.
Cochineal.	Indian Corn Meal.	Tar.
Coin and Bullion.	Indigo.	Tallow.
Cotton Wool.	Live Stock of any Sort.	Tobacco.
Drugs of all Sorts.	Lumber.	Turpentine.
Diamonds and Precious Stones.	Logwood.	Timber.
	Mahogany, and other Wood for Cabinet Wares.	Tortoise-shell.
Flax.		Wool.
Fruit and Vegetables.		Wheat.
Fustick, and all Sorts of Wood for Dyers' Use.	Masts.	Yards.
	Mules.	
Flour.	Neat Cattle.	

Imperial Statute 3° GEORGE IV, CAP. XLV.[1]

An Act to regulate the Trade between His Majesty's Possessions in *America* and the *West Indies*, and other Parts of the World.

[24th *June* 1822.]

'WHEREAS it is expedient to allow greater Freedom of Trade 'and Intercourse between the Colonies, Plantations and Islands 'belonging to His Majesty in *America* and in the *West Indies*, and 'other Parts of the World; and to repeal certain Acts now in force 'relating to the Trade and Intercourse hitherto allowed to be car-'ried on between His Majesty's Colonies, Plantations, Islands and

[1] *Ibid.*, pp. 711-714.

'Places in *Europe* South of *Cape Finisterre,* and to make further 'Provision for encouraging and extending the same:' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the Authority of the same, That so much of an Act passed in the Twenty fifth Year of the Reign of King Charles the Second, intituled *An Act for the Encouragement of the* Greenland *and* Eastland *Trades, and for the better securing the Plantation Trade,* as imposes a Duty upon the Exportation of Sugar, Tobacco, Cotton Wool, Indigo, Ginger, Logwood, Fustic, Dying Wood and Cocoa Nuts, from any of His Majesty's Plantations in *America, Asia* or *Africa;* also an Act passed in the Fifty first Year of the Reign of His late Majesty King *George* the Third, intituled *An Act to regulate the Trade between Places in* Europe *South of* Cape Finisterre, *and certain Ports in the* British *Colonies in* North America; also an Act passed in the Fifty second Year of the Reign of His said late Majesty, intituled *An Act to permit Sugar, Coffee and Cocoa, to be exported from His Majesty's Colonies and Plantations to any Port in* Europe *to the South of* Cape Finisterre, *and Corn to be imported from any such Port, and from the Coast of* Africa *into the said Colonies and Plantations, under Licences granted by the Collectors and Comptrollers of the Customs;* also, so much of an Act passed in the Fifty fifth Year of the Reign of His said late Majesty, intituled *An Act to regulate the Trade between* Malta *and its Dependencies and His Majesty's Colonies and Plantations in* America, *and also between* Malta *and the United Kingdom,* as relates to the Trade allowed to be carried on between the Island of *Malta* and the Dependencies thereof, and His Majesty's Colonies and Plantations in *America;* also an Act passed in the Fifty seventh Year of the Reign of His said late Majesty, intituled *An Act to extend the Privileges of the Trade of* Malta *to the Port of* Gibraltar; also another Act passed in the Fifty seventh Year of the Reign of His said late Majesty, intituled *An Act to allow the Importation of Oranges and Lemons from the* Azores *and the* Maderias *into the* British *Colonies in* North America, shall be and the same are hereby repealed, save and except as to the Recovery of any Forfeiture or Penalty incurred on or before the passing of this Act: Provided nevertheless, that all Acts expressly repealed by any of the said Acts shall be deemed and taken to be and shall remain repealed.

Acts and Parts of Acts regulating Trade and Intercourse between the British Colonies and Europe repealed; viz.

25 C.2c.7.§2.

51 G.3.c.97.

52 G.3.c.98.

55 G.3.c.29.

57 G.3.c.4.

57 G.3.c.89.

Repealed except so far as they repeal former Acts.

Certain Articles may be exported from the British Colonies direct, to certain Ports of Europe in British Ships:

II. And be it further enacted, That it shall be lawful to export from any of His Majesty's said Colonies, Plantations and Islands, in any *British* built Ship or Vessel, owned and navigated according to Law, any Articles, the Growth, Produce or Manufacture of any such Colony, Plantation or Island, and any Articles which have been legally imported into any such Colony, Plantation or Island, direct to any Foreign Port in *Europe*, or in *Africa*, or to *Gibraltar*, the Island of *Malta*, or the Dependencies thereof, or the Islands of

Guernsey, Jersey, Alderney or *Sark:* any thing contained in an Act made in *England,* in the Twelfth Year of the Reign of His Majesty King *Charles* the Second; intituled *An Act for the encouraging and increasing of Shipping and Navigation,* or of any other Act or Acts in force in the United Kingdom, or in *Great Britain* or *Ireland* respectively, to the contrary notwithstanding.

[Cap. 18]

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Articles in Schedule (A.) may be exported from certain Places in Europe, or in Africa, to Colonies, &c. in British Ships.

VIII. And be it further enacted, That it shall be lawful to export in any *British* Ship or Vessel, owned and navigated acording to Law, from any Foreign Port in *Europe* or in *Africa,* or from *Gibraltar,* the Island of *Malta* or the Dependencies thereof, or the Islands of *Guernsey, Jersey, Alderney* or *Sark,* to any of His Majesty's Colonies, Plantations or Islands in *America* or the *West Indies,* the Articles enumerated or described in the Schedule hereunto annexed, marked A.; any thing contained in an Act made in *England* in the Fifteenth Year of the Reign of His Majesty King *Charles* the Second, intituled *An Act for the Encouragement of Trade,* or any other Act or Acts in force in the United Kingdom, or in *Great Britain* or *Ireland* respectively, to the country notwithstanding.

Duties to be paid on Articles in Schedule (B.) upon Importation into Colonies, &c.

IX. And be it further enacted, That from and after the passing of this Act there shall be raised, levied, collected and paid unto His Majesty, His Heirs and Successors, upon the Importation of the several Articles enumerated or described in the Schedule hereunto annexed marked B., into any of His Majesty's Colonies, Plantations or Islands in *America* or the *West Indies,* under the Authority of this this Act, from any Port or Place in *Europe* or *Africa* as aforesaid, the several Duties of Customs, as the same are respectively inserted or described and set forth in Figures in the said Schedule marked B.; and the same shall be raised, levied, collected, paid and received under the Management of the Commissioners of the Customs in *England,* in such and the like manner and form, and by such and the like Rules, Ways, Means and Methods respectively, and under such Penalties and Forfeitures, as any other Duties now payable to his Majesty on Goods imported into any of the Islands, Plantations, Colonies or Territories belonging to or under the Dominion of His Majesty in *America* or the *West Indies* are or may be raised, levied, collected, paid and recovered by any Act or Acts of Parliament now in force, as fully and effectually, to all Intents and Purposes, as if the several Clauses, Powers, Directions, Penalties and Forfeitures relating thereto were particularly repeated and again enacted in the Body of this Act; and the Produce of such Duties shall be paid by the Collector of the Customs to the Treasurer or Receiver General of the Colony, Province or Plantation in which the same shall be respectively levied, to be applied to such Uses and Purposes as may be directed by the Authority of the respective General Courts or General Assemblies of such Colonies, Provinces or Plantations.

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Recovery and Application of Forfeitures.

XV. And be it further enacted, That all and every the Goods or Commodities, and all Ships or Vessels forfeited by this Act, shall and may be seized by the Commander or Commanders of any of His Majesty's Ships or Vessels of War, or any Commissioned, Warrant or Petty Officer specially authorized by him or them, or by any Officer or Officers of His Majesty's Customs; and that every Forfeiture and Penalty incurred by this Act shall and may respectively be sued for, prosecuted and recovered in such Courts, and by such and the like Ways, Means and Methods, and the Produce thereof respectively disposed of and applied in such and the like manner, and to such and the like Uses and Purposes, as any Forfeiture or Penalty incurred by any Law respecting the Revenue of the Customs may now be sued for, prosecuted or recovered, disposed of and applied either in this Kingdom or in any of His Majesty's Dominions in *America* or the *West Indies* respectively, as the case may happen to be.

In Action for executing Act. General Issue.

XVI. And be it further enacted, That if any Person or Persons shall be sued or prosecuted for any thing done or to be done in pursuance of this Act, such Person or Persons may plead the General Issue, and give this Act and the Special Matter in Evidence; and if the Plaintiff or Plaintiffs, Prosecutor or Prosecutors, shall become Nonsuit, or forbear the Prosecution, or discontinue his, her or their Action, or if a Verdict shall pass against him, her or them, the Defendant shall have Treble Costs, and shall have the like Remedy for the same as in Cases where Costs are by Law given to Defendants.

Treble Costs.

TRADE WITH THE WEST INDIES.[1]

On the 1st inst Mr. Robinson, President of the Board of Trade proposed two Resolutions to the House of Commons, in committee, on the subject of the trade with the West Indies.

"Mr. Robinson did not distinctly present the features of his proposed bills—but mentioned that his purpose was to increase the intercourse of the colonies with *Foreign nations,* and to put them upon a footing as favourable as the now independent colonies of other powers. He said the commerce might be carried on in British or *Foreign* ships, those ships being described as ships built in the country and navigated according to the laws of that country. In this way exports from the colonies and imports to them from the Continent and islands of America would be carried on in *Foreign* and British ships. If any differences were attempted to be made, the only consequence would be that foreign powers would make the same difference with respect to British vessels.– He developed the advantages of a free trade, and after some conversation the motion was agreed to."

The resolutions to bring in two Bills were then proposed and passed with much unanimity. Unrestricted trade has for a long time past been enforced by the Edinbro' Review, and we have lately remarked that the Quarterly Review which had always professed and defended opposite principles, had also in a recent instance strongly recommended a free trade in Corn, and proposed a

[1] *Upper Canada Gazette and Weekly Register, May 30, 1822.*

gradual reduction, so that restriction might in a few years be entirely supplanted– It was easy to see what, together with other writings, would be the ultimate effect on the minds of the public men of England, when the two most popular and valuable periodical works in Europe defended the same principles; and it may now, perhaps, be fairly said, that these principles will form an essential part of the future commercial policy of Great Britain.

One of the Bills alluded to above, has for its object to regulate the intercourse of British North America, and America generally with the West Indies; and the other, to regulate the intercourse between British North America and the West Indies *with other parts of the world,* this, it is evident, is intending British North America and the West Indies to have intercourse with other parts of the world, or why talk of regulating that intercourse? in other words, it is the intention of allowing the British American Colonies to trade with other than British possessions, and vice versa, subject, it may be supposed, to certain regulations.

Every thing seems to indicate that these Bills may pass– If they do, they will materially change the direction of our commerce, perhaps in due time some of the articles of commerce themselves, and send our vessels to almost every port of the known world.– The enterprize and intelligence of merchants will no doubt soon discover new sources of profitable trade, and the measure perhaps may not essentially affect the actual prosperity of the country

The Timber Trade to England without some prejudicial alteration in the Lumber Act, will not be superseded; nor yet the extensive and exclusive introduction of British Manufactures, which are cheaper and superior to those of any other country; so that the greater part of our trade would continue in its usual course, benefitting the mother country, while that which could not before be carried on at all, or only upon the most unfavourable terms, would find some other channel, at once doing us a material benefit. The spirit of hazardous speculation would grow up among our merchants, and they would gradually in that sense be more nearly assimilated to those of the extensive trading towns in other parts of the world. We believe that the petitions from the Colonies have had some effect in suggesting the measure, so that if we are allowed to trade with foreign nations, it is only what we have asked for, and the consequence, good or bad, partly are to be attributed to ourselves.

REVENUE DISPUTE.

Bathurst to Maitland.[1]

Downing Street
8th March 1822

Sir,

I have the Honor to acknowledge the receipt of your dispatch N° 37 transmitting the proceedings of the Commissioners of Upper and Lower Canada relative to the proportion of Duties levied at Quebec which may be due to the Upper Province, and stating the distressing situation in which you are placed in consequence of their disagreement– I have now the Honor to acquaint you that a Bill will be submitted to Parliament to regulate the proportions of the

[1] *G. 60, pp. 16-17.*

Revenue Collected at Quebec to which the Provinces of Upper and Lower Canada may be respectively entitled. I also inclose for your information & guidance a letter from the Treasury on this subject conveying instructions as to the manner of repaying the Sum advanced to the Civil Government of Upper Canada from the Military Chest.

I have the Honour to be
Sir,
Your most obedient,
Humble Servant

BATHURST

Major General
Sir P. Maitland K.C.B.
& &c

[Endorsed] Downing Street
8 March 1822
Earl Bathurst
relative to Financial
arrangements between
the two Provinces

CANADA TRADE ACT, 1822.[1]

IMPERIAL STATUTE 3 GEO. IV, CAP CXIX.

An Act to regulate the Trade of the Provinces of *Lower* and *Upper Canada*, and for other Purposes relating to the said Provinces.

[5th *August* 1822.]

'Whereas it is expedient to make further Regulation respecting the Trade of the Provinces of *Upper* and *Lower Canada*, in *North America*:' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That from and after the passing of this Act, it shall be lawful to import by Land or Inland Navigation in any *British* or *American* Vessel or Vessels, Boat or Boats, Carriage or Carriages, the Goods, Wares and Commodities the Growth, Produce or Manufacture of the United States of *America*, enumerated in the Schedule or Table annexed to this Act marked (A.), from any Port or Place in the United States of *America*, into any Port or Place of Entry at which a Custom House now is or hereafter may be lawfully established, in either of the Provinces of *Upper* and *Lower Canada*: Provided always nevertheless, that it shall and may be lawful for the Governor, Lieuten-

Goods of the United States in Schedule (A.) may be imported into Upper and Lower Canada:

[1] *Statutes at Large, United Kingdom, 60 Geo. 3-3, Geo. 4, pp. 946-953.*

Governor may diminish or increase Ports of Entry.

ant Governor or Person administering the Government of either of the said Provinces respectively, by and with the Advice and Consent of the Executive Council thereof for the time being, from time to time to diminish or increase by Proclamation, the Number of Ports or Places which are or hereafter may be appointed in such Province for the Entry of Goods, Wares and Commodities imported from the United States of *America*.

Duties to be paid on Goods in Schedule (B.)

II. And be it further enacted, That from and after the passing of this Act, there shall be raised, levied, collected and paid unto His Majesty, His Heirs and Succesors, for and upon such of the Goods, Wares and Commodities which shall be so imported, as are enumerated in the Schedule or Table annexed to this Act marked (B.), the several Duties of Customs as the same are respectively inserted or described and set forth in Figures in the said Schedule.

In what Case Article free from Colonial Duty:

III. Provided always, and be it further enacted, That if upon the Importation of any Article charged with Duty by this Act, the said Article shall also be liable to the Payment of Duty under the Authority of any Colonial Law, equal to or exceeding in Amount the Duty charged by this Act, then and in such Case the Duty charged upon such Article by this Act shall not be demanded or paid upon the Importation of such Article: Provided also, that if the Duty payable under such Colonial Law shall be less in amount than the duty payable by this Act, then and in such case the Difference only between the Amount of the Duty payable by this Act and the Duty payable under the Authority of such Colonial Laws, shall be deemed to be the Duty payable by this Act; and the same shall be collected and paid in such and the like manner, and appropriated and applied to such and the like Uses, as the Duties specified in the said Schedule annexed to this Act marked (B.) are directed to be collected, paid, appropriated and applied.

In what Case Difference paid.

Proviso respecting Tonnage Duties on American Vessels.

IV. And be it further enacted, That the same Tonnage Duties shall be paid upon all *American* Vessels or Boats, importing any Goods into either of the said Provinces, as are or may be for the time being payable in the United States of *America*, on *British* Vessels or Boats entering the Harbours of the State from whence such Goods shall have been imported.

Value of Goods subject to ad valorem Duty, ascertained by c. 44. s. 9. ante.

V. And be it further enacted, That in all Cases in which the Duties imposed by this Act upon the Importation of Articles into the said Provinces, or either of them, are charged, not according to the Weight, Guage or Measure, but according to the Value thereof, such Value shall be ascertained in the Mode prescribed by an Act passed in this present Session of Parliament, intituled *An Act to regulate the Trade between His Majesty's Possessions in* America *and the* West Indies, *and other Places in* America *and the* West Indies.

If Payment of Duties refused, Collector may secure Goods, and sell.

VI. And be it further enacted, That if the Importer or Proprietor of such Articles shall refuse to pay the Duties hereby imposed thereon, it shall and may be lawful for the Collector or other Chief Officer of the Customs where such Articles shall be imported, and he is hereby respectively required, to take and secure the same, with the Casks or other Package thereof, and to cause the same to be publicly sold, within the Space of Twenty Days at the most after such Refusal made, and at such Time and Place as such Officer shall, by Four or more Days public Notice, appoint for that Purpose; which Articles shall be sold to the highest Bidder; and the Money arising from the Sale thereof shall be applied to the Payment of the said Duties, together with the Charges which shall have been occasioned by the said Sale, and the Overplus (if any) shall be paid to such Importer, Proprietor or any other Person authorized to receive the same.

After Payment of Duty, Overplus paid to Importer.

28 G. 3. c. 39.

'VII. And Whereas a certain Act made and passed in the Twenty eighth Year of the Reign of his late Majesty King *George* the Third, intituled *An Act to allow the Importation of Rum and other Spirits from His Majesty's Colonies or Plantations in the* West Indies *into the Province of* Quebec, *without Payment of Duty, under certain Conditions and Restrictions,* has been repealed during the present Session of Parliament: And Whereas Doubts may be entertained whether a certain other Act, passed in the Forty ninth Year of His said late Majesty's Reign, intituled *An Act to allow the Importation of Rum and other Spirits from the Island of* Bermuda *into the Province of* Lower Canada, *without Payment of Duty, on the same Terms and Conditions as such Importation may be made directly from His Majesty's Sugar Colonies in the* West Indies, might not still remain in force, notwithstanding the Repeal of the said first mentioned Act:'

49 G. 3. c. 16. allowing the Importation of Rum.

Repealed.

Be it therefore enacted and declared, That the said last mentioned Act shall be and the same is hereby repealed.

'VIII. And Whereas it is expedient to afford Protection to the Trade between the said Colonies and Plantations and the Province of *Lower Canada,* by imposing the same Duty upon Rum or other Spirits, the Produce or Manufacture of the said Colonies, imported from *Great Britain* into the said Province, as is now payable upon the same Articles when imported from His Majesty's said Colonies or Plantations in the *West Indies;*' Be it therefore enacted, That from and after the passing of this Act, there shall be raised, levied, collected and paid unto His Majesty, His Heirs and Successors, for and upon every Gallon of Rum or other Spirits, the Produce or Manufacture of any of His Majesty's Islands, Colonies or Plantations in the *West Indies,* which shall be imported or brought into any Part of the said Province of *Lower Canada* from *Great Britain* or *Ireland,* or any of the *British* Dominions in *Europe,* the Sum of Six Pence over and above all other Duties now or hereafter to be made payable thereon in the said Province.

Additional Duty on West India Rum imported into Lower Canada from U.K. &c.

Duties in Sterling Money.

IX. And be it further enacted, That the Rates and Duties chargeable by this Act shall be deemed, and are hereby declared to be Sterling Money of *Great Britain,* and shall be collected, recovered and paid to the Amount of the Value which such nominal Sums bear in *Great Britain;* and that such Sums may be received and taken according to the Proportion and Value of Five Shillings and Six Pence to the Ounce in Silver; and that the said Duties hereinbefore granted shall be

How recovered and applied.

received, levied, collected, paid and recovered in the same Manner and Form, and by such Rules, Ways and Means, and under such Penalties and Forfeitures as any other Duties payable to His Majesty upon Goods imported into the said Provinces of *Upper* and *Lower Canada,* or into either of them respectively, are or shall be raised, levied, collected, paid and recovered by any Act or Acts of Parliament, as fully and effectually to all Intents and Purposes, as if the several Clauses, Powers, Directions, Penalties and Forfeitures relating thereto were particularly repeated and again enacted in the Body of this Act; and that all the Monies which shall arise by the said Duties, (except the necessary Charges of raising, collecting, levying, recovering, answering, paying and accounting for the same) shall be paid by the Collector of His Majesty's Customs, into the Hands of His Majesty's Receiver General in the said Provinces respectively for the time being, and shall be applied to and for the Use of the Provinces of *Upper* and *Lower Canada* respectively, in such manner only as shall be directed by any Law or Laws which may be made by His Majesty, His Heirs or Successors, by and with the Advice and Consent of the Legislative Council and Assembly of each of the said Provinces respectively.

Goods of His Majesty's Dominions may be exported to United States.

X. And be it further enacted, That it shall be lawful to export in any *British* or *American* Vessel or Vessels, Boat or Boats, Carriage or Carriages, from any of the Ports or Places of Entry, now or hereafter to be established in the said Provinces, to any Port or Place in the United States of *America,* any Article of the Growth, Produce or Manufacture of any of His Majesty's Dominions, or any other Article legally imported into the said Provinces: Provided always, that nothing herein contained shall be construed to permit or allow the Exportation of any Arms or Naval Stores, unless a Licence shall have been obtained for that Purpose from His Majesty's Secretary of State; and in case any such Articles shall be shipped or waterborne for the Purpose of being exported contrary to this Act, the same shall be forfeited, and shall and may be seized and prosecuted as hereinafter directed.

Arms and Naval Stores not exported without a Licence.

Proviso for Inland Navigation.

XI. And be it further enacted, That nothing in this Act contained shall be construed to interfere with or repeal, as respects the Inland Navigation of the said Provinces, any of the Provisions contained in a certain Act passed in the Seventh and Eighth Years of the Reign of King *William,* intituled *An Act for preventing Frauds, and regulating Abuses in the Plantation Trade;* except in so far as the same are altered or repealed by this Act.

7 & 8 W. 3. c. 22.

Recovery and Application of Penalties.

XII. And be it further enacted, That all Penalties and Forfeitures incurred in either of the said Provinces under this Act (except where it is otherwise provided,) shall and may be sued for and prosecuted in any Court having competent Jurisdiction within such Province respectively; and the same shall and may be recovered, divided and accounted for in the same Manner and Form, and by the same Rules and Regulations in all respects as other Penalties and Forfeitures for Offences against the Laws relating to the Customs and Trade of the said Provinces respectively, shall or may by any Act or Acts of the Legislatures of such Provinces be directed to be sued for, prosecuted, recovered, divided and accounted for within the same respectively.

'XIII. And Whereas it is expedient to encourage the Trade between *Canada* and His Majesty's Colonies of *Newfoundland, Nova Scotia, New Brunswick* and *Prince Edward's Island,* by enabling the Merchants and Traders of *Newfoundland* to export from thence into *Canada* Rum and other Spirits, the Produce of the *British West India* Islands, or any of His Majesty's Colonies on the Continent of *South America,* free of any Duty which may have been imposed upon its Importation from any of the Places last aforesaid, and for which Purpose to allow, upon the Export of such Rum or other Spirits, a Drawback of the full Duties paid upon the Importation thereof;' Be it therefore enacted, That from and after the passing of this Act, there shall be paid and allowed, upon the Exportation from any or either of the said Colonies of *Newfoundland, Nova Scotia, New Brunswick* or *Prince Edward's Island,* into *Canada,* of Rum or other Spirits, being the Produce of the *British West India* Islands, or any of His Majesty's Colonies on the Continent of *South America,* a Drawback of the full Duties of Customs which may have been paid upon the Importation thereof from any of the Places last aforesaid, into any or either of the said Colonies of *Newfoundland, Nova Scotia, New Brunswick* or *Prince Edward's Island,* upon a Certificate being produced, under the Hands and Seals of the Collector and Comptroller of His Majesty's Customs at *Quebec,* certifying that the said Rum or other Spirits have been duly landed in *Canada.*

Drawback on Exportation of Rum and Spirits, from Newfoundland, &c. to Canada.

Certificate.

Conditions on which the Drawback to be paid.

XIV. And be it further enacted, That no Entry shall pass nor any Drawback be paid or allowed, upon the Exportation of Rum or other Spirits from any or either of the said Colonies of *Newfoundland, Nova Scotia, New Brunswick* or *Prince Edward's Island,* into *Canada,* unless such Entry be made in the Name of the real Owner or Owners, Proprietor or Proprietors of the said Goods; and that before such Owner or Owners, Proprietor or Proprietors, shall receive the said Drawback so allowed as aforesaid, One or more of them shall verify upon Oath, upon the Debenture to be made out for the Payment of such Drawback, that he or they is or are the real Owner or Owners of the said Goods; nor unless Proof on Oath shall be made to the Satisfaction of the Collector and Comptroller of His Majesty's Cus-

toms at the Port from whence the said Goods shall be so imported into *Canada,* that the full Duties due upon the Importation of the said Goods at the said Port had been paid and discharged: Provided always, that in Cases where the Owners of the said Goods are resident in any other Part of the *British* Dominions, it shall be lawful for their known and established Agents in the Colonies from whence the said Goods shall be so imported into *Canada,* to take the necessary Oaths on behalf of the said Owners.

Drawback how payable.

XV. And be it further enacted, That the said Drawback shall be paid by the Collector of His Majesty's Customs at the Port from whence the said Goods shall be so imported into *Canada,* with the Consent of the Comptroller there, out of any Monies in his Hands arising from the Duties of Customs.

No Drawback unless Rum be exported from Newfoundland within One Year after First Importation.

XVI. And be it further enacted, That no Drawback shall be paid and allowed as aforesaid, unless the said Rum or other Spirits shall be duly entered for Exportation with the proper Officers of the Customs, and actually shipped on board the Ship or Vessel in which the said Goods are intended to be exported, within the Space of One Year from the Time such Rum or other Spirits were originally imported into the Colony from whence it is intended to export them to *Canada,* nor unless such Drawback shall be claimed within One Year after the Goods are so shipped for Exportation.

'XVII. And Whereas since the Division of the Province of *Quebec* into the Provinces of *Lower* and *Upper Canada,* divers Regulations have from time to time been made, by Agreements concluded under the Authority of Acts passed by the Legislatures of the said Two Provinces respectively, concerning the imposing of Duties upon Articles imported into the Province of *Lower Canada,* and the Payment of Drawbacks of such Duties to the Province of *Upper Canada,* on account of the Proportion of Goods so imported into *Lower Canada,* and passing from thence into the said Province of *Upper Canada,* and consumed therein; the last of which Agreements expired on the First Day of *July* One thousand eight hundred and nineteen: And Whereas it appears by the Report of the Commissioners last appointed for the Purposes aforesaid, that the Province of *Upper Canada* claims certain Arrearages from the Province of *Lower Canada,* on account of such Drawbacks, which Claims are not admitted on the Part of the Province of *Lower Canada;* and it further appears by the Report of the said Commissioners, appointed on behalf of both Provinces for the Purposes aforesaid, that they have failed to establish any Regulation for the Period beyond the First Day of July One thousand eight hundred and nineteen, by reason that they could not agree upon the Proportion of Duties to be paid to *Upper Canada* by way of Drawbacks:' For Remedy of the Inconvenience occasioned by the Suspension of the said Agreement, and for the satisfactory Investigation and Adjustment of the said Claims, be it enacted, That it shall and may be lawful for

Regulations as to settling Proportions of Duties and Drawbacks between the Provinces, by Arbitrators.

the Governor, Lieutenant Governor or Person administering the Government of each of the said Provinces of *Upper* and *Lower Canada*, so soon as conveniently may be after the passing of this Act, to appoint, by Commission under the Great Seal of his respective Province, One Arbitrator; and that the said Arbitrators so appointed shall have Power, by an Instrument under their Hands and Seals, to appoint a Third Arbitrator; and in case of their not agreeing in such Appointment within One Month from the Date of the Appointment of the Arbitrators so directed to be made on the Part of the respective Provinces, or the last thereof if the said Appointments shall not be made on the same Day, His Majesty, His Heirs or Successors, shall have Power, by an Instrument under His Sign Manual, to appoint such Third Arbitrator, who (if appointed in manner last mentioned) shall not be an Inhabitant of either of the said Provinces; and that the Three Arbitrators so appointed as aforesaid, shall have power to hear and determine all Claims of the Province of *Upper Canada* upon the Province of *Lower Canada*, on account of Drawbacks or Proportion of Duties under Agreements made and ratified by the Authority of the Legislatures of the said Two Provinces, according to the fair Understanding and Construction of the said Agreements; and also to hear any Claim which may be advanced on the Part of the Province of *Upper Canada*, to a Proportion of Duties heretofore levied in *Lower Canada* under *British* Acts of Parliament, the Division of which Duties shall not have been embraced within the Terms of any Provisional Agreement, and to report the Particulars of any such Claim, with the Evidence thereupon, to the Lords Commissioners of His Majesty's Treasury for the time being; and if it shall appear to the Commissioners of His Majesty's Treasury that any Sum is justly due from the Province of *Lower Canada* to the Province of *Upper Canada* on account of such last mentioned Claim, they shall signify the same, together with the Amount, to the Governor or Person administering the Government of the Province of *Lower Canada* for the time being, who shall thereupon issue his Warrant upon the Receiver General of *Lower Canada*, to pay such Amount to the Receiver General of *Upper Canada*, in full Discharge of any such Claims.

Umpire appointed by His Majesty.

Arbitrators to report to Treasury.

Arbitrators may send for Persons and Records. Persons refusing, Penalty, 50£.

XVIII. And be it further enacted, That the said Arbitrators shall have Power to send for and examine such Persons, Papers and Records as they shall judge necessary for their Information in the matters referred to them; and that if any Person or Persons shall refuse or neglect to attend the said Arbitrators, or to produce before them any Papers or Documents, having been duly served in either Province with reasonable Notice in Writing for that Purpose, he, she or they shall forfeit and pay the Sum of Fifty Pounds, to be recovered by Bill, Plaint or Information, in any Court having competent Jurisdiction within the Province in which such Person usually resides, to be applied towards the Support of the Civil Government of the said Province, and

to be accounted for to His Majesty, through the Lords Commissioners of His Majesty's Treasury for the time being, in such Manner and Form as it shall please His Majesty to direct.

Witnesses to be sworn.

XIX. And be it further enacted, That the Witnesses to be produced before the said Arbitrators, if it is desired by either of the said Arbitrators, shall and may be sworn before any of His Majesty's Justices of the Peace within either of the said Provinces, or before any One of the said Arbitrators, who are hereby empowered, jointly or severally, to administer such Oath; and that if any Person shall, in any such Oath so taken as aforesaid, wilfully forswear himself, he shall be deemed guilty of wilful and corrupt Perjury.

False swearing, Perjury.

Appointing Arbitrators on Vacancies.

XX. And be it further enacted, That in case of the Death, Removal or Incapacity of either of the said Arbitrators before making an Award, or in case the Third Arbitrator chosen or appointed as aforesaid shall refuse to act, another shall be appointed in his Stead, in the same manner as such Arbitrator so dead, removed or become incapable or refusing to act as aforesaid, was originally appointed; and that in case a Third Arbitrator shall be appointed by His Majesty as hereinbefore mentioned, it shall and may be lawful for the Governor in Chief in and over the said Provinces, to determine the Amount of Remuneration to be paid to such Arbitrator, which Amount shall be defrayed in equal Proportions by each Province, and shall be paid by Warrants, to be issued for that Purpose by the Governor, Lieutenant Governor or Person administering the Government of each Province, upon the Receiver General thereof respectively.

Award of Arbitrators final.

XXI. And be it further enacted, That the Award of the Majority of the said Arbitrators, so far as the same shall be authorized by this Act, shall be final and conclusive as to all Matters therein contained; and that if either of the Arbitrators nominated by the Governor, Lieutenant Governor or Person administering the Government of either of the said Provinces, shall refuse or neglect to attend, on due Notice being given, the Two remaining Arbitrators may proceed to hear and determine the Matters referred to them, in the same manner as if he were present.

Two may proceed.

Award certified to Treasury and Governor, &c. of the Provinces.

XXII. And be it further enacted, That the said Arbitrators, or a Majority of them as hereinbefore mentioned, shall certify the Award to be made by them in the Premises, under their Hands and Seals, to the Commissioners of His Majesty's Treasury of the United Kingdom of *Great Britain* and *Ireland*, and to the Governor, Lieutenant Governor or Person administering the Government of each of the said Provinces; and that if any Sum be directed by the said Award to be paid to the Province of *Upper Canada* by the Province of *Lower Canada*, it shall and may be lawful for the Governor, Lieutenant Governor or Person administering the Government of the said Province of *Lower Canada*, and he is hereby required to issue his Warrant upon

the Receiver General of the Province of *Lower Canada*, in favour of the Receiver General of the Province of *Upper Canada*, for the Sum so awarded; which Sum shall be accordingly paid by the Receiver General of *Lower Canada*, in discharge of such Warrant, and shall be accounted for by him to the Lords Commissioners of His Majesty's Treasury for the time being, in such Manner and Form as His Majesty, His Heirs and Successors shall be graciously pleased to direct.

Payment of Sum awarded.

Arbitrators may determine Claims advanced by Lower Canada upon Upper Canada.

XXIII. And be it further enacted, That the Arbitrators to be appointed under this Act shall have Power to hear and determine any Claim which may be advanced on the Part of the Province of *Lower Canada*, upon the Province of *Upper Canada*, being of the same Description as those which by this Act may be preferred to the same Arbitrators on the Part of *Upper Canada;* and that their Award thereupon shall be final and conclusive, and shall be carried into effect if the same be made in Favour of the Province of *Lower Canada*, in the same manner as is herein directed with respect to any Award which may be made in Favour of the Province of *Upper Canada*.

Proportion of Duties arising in Lower Canada to be One fifth to Upper Canada.

XXIV. And be it further enacted, That of all Duties which have been levied in the Province of *Lower Canada* since the First Day of *July* One thousand eight hundred and nineteen, under any Act passed in the said Province, upon any Goods, Wares, Merchandize or Commodities imported by Sea into the Province of *Lower Canada*, and also of all Duties, which after the passing of this Act, and before the First Day of *July* One thousand eight hundred and twenty four, shall be levied in the Province of *Lower Canada*, under any Act passed in the said Province, upon any Goods, Wares, Merchandizes or Commodities imported by Sea into the said Province of *Lower Canada*, the Province of *Upper Canada* shall be entitled to have and receive One fifth Part as the Proportion of Duties arising and due to the said Province of *Upper Canada* upon such Importations; and that the Governor, Lieutenant Governor or Person administering the Government of the Province of *Lower Canada*, shall and may issue his Warrant forthwith upon the Receiver General of *Lower Canada*, in favour of the Receiver General of the Province of *Upper Canada*, for such Proportion of the Duties as shall have been received in the Province of *Lower Canada* before the passing of this Act, and shall and may on the First Day of *January* and the First Day of *July*, in each and every Year thereafter, issue his Warrant upon the Receiver General of *Lower Canada* in like manner, for the Payment to the Receiver General of *Upper Canada*, of such Sum as may be then ascertained to be due on account of the said Proportion, according to the Provisions of this Act.

After July 1, 1824, proportions of Duties to be awarded by Arbitrators as hereinbefore mentioned. Award to be made every Four Years.

XXV. And be it further enacted, That immediately after the said First Day of *July* One thousand eight hundred and twenty four, the Proportion to be paid to *Upper Canada* for the Four Years next succeeding, of Duties Levied in the Province of *Lower Canada*, under the Authority of any Act or Acts passed or to be passed therein, upon Goods, Wares and Commodities imported therein by Sea, shall and may be ascertained by the Award of Arbitrators, to be appointed in the same manner and with the same Powers as hereinbefore provided with respect to the Arbitrators to whom the Question of Arrears is to be referred, and that Arbitrators shall in like manner be appointed, and an Award made Once after every Four Years thereafter, for the Purpose of establishing such Proportion from time to time; and all and every the Provisions contained in this Act, respecting the Appointment, Powers and Remuneration of the Arbitrators to be first appointed after the passing thereof, and regarding the Execution of their Duty, shall apply and extend to the Arbitrators to be appointed for the Purposes last herein mentioned.

Proportion hereby established to be paid, until a new one is made.

XXVI. And be it further enacted, That after the said First Day of *July* One thousand eight hundred and twenty four, and until a new Proportion of Duties, to be paid to *Upper Canada*, shall be established, as hereinbefore provided, and also at all times hereafter, in default of any such Proportion being appointed, the Proportion of Duties last assigned to be paid to *Upper Canada* under the Authority of this Act, shall continue to be paid by the Province of *Lower Canada*, and Warrants shall issue for the Payment of the same, in the same manner as for the Period before the same First Day of *July* One thousand eight hundred and twenty four: Provided always, that it shall be in the Power of the Arbitrators nevertheless, by their subsequent Award, to alter such Proportion from the Period for which it was last established, if it shall appear to them just so to do.

Proviso.

14 G. 3. c. 88. §1, 2.

'XXVII. And Whereas by a certain Act of the Parliament of 'Great Britain passed in the Fourteenth Year of His late Majesty's 'Reign, intituled *An Act to establish a Fund towards farther defraying* 'the Charges of the Administration of Justice and Support of the Civil 'Government within the Province of Quebec in America, certain Duties 'were imposed upon Goods and Commodities imported into the said 'Province, which Duties are by the said Act directed to be applied, 'under the Authority of the Lord High Treasurer, or Commissioners 'of His Majesty's Treasury, in making a more certain and adequate 'Provision towards defraying the Expence of the Administration of 'Justice, and the Support of the Civil Government in the said Province 'of *Quebec;* and since the Division of the said Province of *Quebec* 'into the Provinces of *Upper* and *Lower Canada*, it has been contended, 'on behalf of the said Provinces, that the Proceeds of such Duties 'should be distributed between the said Two Provinces in proportion 'to the Amount of Expences defrayed by each respectively towards the

'Administration of Justice and the Support of its Civil Government, 'and not in proportion to the estimated Consumption within either 'Province of the Articles upon which such Duties shall have been paid;' Be it therefore enacted, That it shall be lawful for the Arbitrators to be appointed, from time to time, for the Purpose of establishing the Proportion which shall be paid to *Upper Canada*, of such Duties as now are, or hereafter may be imposed, by Acts passed in the Province of *Lower Canada*, to receive the Claims in behalf of each Province with respect to its Proportion of Duties levied under the said Act passed in the Fourteenth Year of His said late Majesty's Reign, since the Expiration of the last Provisional Agreement heretofore ratified between the said Two Provinces, or which may hereafter be levied under the Authority of the said Act, upon Goods and Commodities imported into *Lower Canada*, and to report the same, with the Evidence thereon, to the Lords Commissioners of His Majesty's Treasury for the United Kingdom of *Great Britain* and *Ireland* for the time being, in order that they may make such Order respecting the Proportion in which the same shall be expended within each of the said Provinces respectively, for the Purposes mentioned in the said Act, as to them shall seem meet: Provided always nevertheless, that until such Order shall be made by the Lords Commissioners of His Majesty's Treasury as aforesaid, the Proceeds of such Duties shall be distributed in the same Proportion between the said Two Provinces, as the Duties levied under the Provincial Acts of the Province of *Lower Canada* within the same Period, subject nevertheless to be increased or diminished, as respects either of the said Provinces, by any subsequent Order of the said Lords Commissioners, extending to the Period for which no such Order had before been made.

Arbitrators to receive Claims from Provinces in respect of Proportions of Duties, and report same, with the Evidence to the Treasury.

Proviso for Proceedings until Order made by Treasury.

'XXVIII. And Whereas the Division of the Province of *Quebec*, into the Two Provinces of *Upper* and *Lower Canada*, was intended for the common Benefit of His Majesty's Subjects residing within both of the newly constituted Provinces, and not in any manner to obstruct the Intercourse or prejudice the Trade to be carried on by the Inhabitants of any Part of the said late Province of *Quebec* with *Great Britain*, or with other Countries; and it has accordingly been made a Subject of mutual Stipulation between the said Two Provinces, in the several Agreements which have heretofore subsisted, that the Province of *Upper Canada* should not impose any Duties upon Articles imported from *Lower Canada*, but would permit and allow the Province of *Lower Canada* to impose such Duties as they might think fit, upon Articles imported into the said Province of *Lower Canada;* of which Duties a certain Proportion was by the said Agreements appointed to be paid to the Province of *Upper Canada:* And Whereas in consequence of the Inconveniences arising from the Cessation of such Agreements as above recited, it has been found expedient to remedy the Evils now experienced in the Province of *Upper Canada*, and to guard against such as might in future arise from the Exercise

of an exclusive Controul, by the Legislature of *Lower Canada,* over the Imports and Exports into and out of the Port of *Quebec;* and it is further expedient, in order to enable the said Province of *Upper Canada* to meet the necessary Charges upon its ordinary Revenue, and to provide with sufficient Certainty for the Support of its Civil Government, to establish such Controul as may prevent the Evils which have arisen or may arise from the Legislature of *Lower Canada* suffering to expire unexpectedly, or repealing suddenly, and without affording to *Upper Canada* an Opportunity of Remonstrance, existing Duties, upon which the principal Part of its Revenue, and the necessary Maintenance of its Government may depend;' Be it therefore enacted, That all and every the Duties which, at the Time of the Expiration of the last Agreement between the said Provinces of *Upper* and *Lower Canada,* were payable under any Act or Acts of the Province of *Lower Canada,* on the Importation of any Goods, Wares or Commodities into the said Province of *Lower Canada* (except such as may have been imposed for the Regulation of the Trade by Land or Inland Navigation, between the said Province and the United States of *America*), shall be payable and shall be levied according to the Provisions contained in any such Acts, until any Act or Acts for repealing or altering the said Duties, or any Part thereof respectively, shall be passed by the Legislative Council and Assembly of the said Province of *Lower Canada,* and until such Act or Acts, repealing or altering such Duties, shall, after a Copy thereof has been transmitted to the Governor, Lieutenant Governor, or Person administering the Government of the Province of *Upper Canada,* be laid before both Houses of the Imperial Parliament, according to the Forms and Provisions contained in a certain Act of the Parliament of *Great Britain,* passed in the Thirty first Year of the Reign of His said late Majesty, intituled *An Act to repeal certain Parts of an Act passed in the Fourteenth Year of His Majesty's Reign, intituled 'An Act for making more effectual Provision for the Government of the Province of* Quebec, *in* North America,' *and to make further Provision for the Government of the said Province,* and the Royal Assent thereto proclaimed within the Province of *Lower Canada,* according to the Provisions of the said last mentioned Act.

Duties imposed by Lower Canada to remain in force till repealed or altered by a Legislative Act of that Province.

31 G. 3. c. 31.

XXIX. And be it further enacted, That from and after the passing of this Act, no Act of the Legislature of the Province of *Lower Canada,* whereby any additional or other Duties shall or may be imposed on Articles imported by Sea into the said Province of *Lower Canada,* and whereby the Province of *Upper Canada* shall or may in any respect be directly or indirectly affected, shall have the Force of Law until the same shall have been laid before the Imperial Parliament, as provided in certain Cases by the said Act passed in the Thirty first Year of His said late Majesty's Reign, and the Royal Assent thereto published by Proclamation in the said Province of *Lower Canada,* a Copy of such Act having, within One Month from

No Act of Legislature of Lower Canada, imposing Duties affecting Upper Canada valid, until laid before Parliament.

the Time of presenting the same for the Royal Assent in the said Province, been transmitted by the Governor, Lieutenant Governor or Person administering the Government of the Province of *Lower Canada*, to the Governor, Lieutenant Governor or Person administering the Government of the Province of *Upper Canada:* Provided always nevertheless, that it shall not be necessary to transmit any such Act to be laid before the Imperial Parliament, if, before the same shall have been presented for the Royal Assent within the said Province of *Lower Canada*, the Legislative Council and House of Assembly of the said Province of *Upper Canada* shall, by Address to the Governor, Lieutenant Governor or Person administering the Government of the said Province of *Upper Canada*, pray that their Concurrence in the Imposition of the Duties intended to be imposed by such Act may be signified to the Governor, Lieutenant Governor or Person administering the Government of the said Province of *Lower Canada*.

Proviso.

Boats &c. of His Majesty's Subjects may go from Upper Canada into Lower Canada, not laden with Foreign Productions, without being subject to Duty.

'XXX. And Whereas it is expedient that the Productions of the 'Province of *Upper Canada* should be permitted to be exported with-'out being made subject by any Act of the Province of *Lower Canada*, 'either directly or indirectly, to Duties or Impositions on their Arrival 'in that Province, or in passing through the Waters thereof:' Be it enacted, That from and after the passing of this Act, all and every the Boats, Scows, Rafts, Cribs and other Craft belonging to any of His Majesty's Subjects, and coming from the Province of *Upper Canada* into the Province of *Lower Canada*, not laden with the Productions of any Foreign Country, shall be allowed freely to pass into and through the said Province, and shall not be subject to any Rate, Tax, Duty or Imposition, other than any Charge which may now exist for Pilotage, or which may now be established for Toll at any Lock or other Work now actually erected on the navigable Waters thereof; any Law, Statute or Usage of the Province of *Lower Canada* to the contrary notwithstanding; and that the Expence of improving the Navigation of the Waters of the River *Saint Lawrence* shall in future be defrayed by such Measures and in such Proportions as the Arbitrators to be appointed under the Provisions of this Act shall determine, upon the Prayer of either Province: Provided always, that no such Determination shall be carried into effect until sanctioned and enacted by the Legislatures of both of the said Provinces.

Expences of improving the St. Lawrence, how paid.

Lands held in Fief and Seignory may, on Petition of Owners to His Majesty, &c. be changed to the Tenure of free and common Soccage.

'XXXI. And Whereas Doubts have been entertained whether 'the Tenures of Lands within the said Provinces of *Upper* and *Lower* '*Canada* holden in Fief and Seignory can legally be changed: And 'Whereas it may materially tend to the Improvement of such Lands, 'and to the general Advantage of the said Provinces, that such Ten-'ures may henceforth be changed in manner hereinafter mentioned:' Be it therefore further enacted and declared, That if any Person or Persons holding any Lands in the said Provinces of *Lower* and *Upper Canada*, or either of them, in Fief and Seignory, and having legal Power and Authority to alienate the same, shall at any Time from

and after the Commencement of this Act, surrender the same into the Hands of His Majesty, His Heirs or Successors, and shall by Petition to His Majesty, or to the Governor, Lieutenant Governor or Person administering the Government of the Province in which the Lands so holden shall be situated, set forth that he, she or they is or are desirous of holding the same in free and common Soccage, such Governor, Lieutenant Governor or Person administering the Government of such Province as aforesaid in pursuance of His Majesty's Instructions, transmitted through his Principal Secretary of State for Colonial Affairs, and by and with the Advice and Consent of the Executive Council of such Province, shall cause a fresh Grant to be made to such Person or Persons of such Lands to be holden in free and Common Soccage, in like manner as Lands are now holden in free and Common Soccage in that Part of *Great Britain* called *England;* subject nevertheless to Payment to His Majesty, by such Grantee or Grantees, of such Sum or Sums of Money as and for a Commutation for the Fines and other Dues which would have been payable to His Majesty under the original Tenures, and to such Conditions as to His Majesty, or to the said Governor, Lieutenant Governor or Person administering the Government as aforesaid, shall seem just and reasonable: Provided always, that on any such fresh Grant being made as aforesaid, no Allotment or Appropriation of Lands for the Support and Maintenance of a Protestant Clergy shall be necessary; but every such fresh Grant shall be valid and effectual without any Specification of Lands for the Purpose aforesaid; any Law or Statute to the contrary thereof in any wise notwithstanding.

Proviso.

His Majesty may commute with Persons holding Lands at Cens et Rentes.

XXXII. And be it further enacted, That it shall and may be lawful for His Majesty, His Heirs and Successors, to commute with any Person holding Lands at *Cens et Rentes* in any Censive or Fief of His Majesty within either of the said Provinces, and such Person may obtain a Release from His Majesty of all feudal Rights arising by reason of such Tenure, and receive a Grant from His Majesty, His Heirs or Successors, in free and common Soccage, upon Payment to His Majesty of such Sum of Money as His Majesty, His Heirs or Successors, may deem to be just and reasonable, by reason of the Release and Grant aforesaid; and all such Sums of Money as shall be paid upon any Commutations made by virtue of this Act shall be applied towards the Administration of Justice and the Support of the Civil Government of the said Province.

In Action for executing Act.

General Issue.

Treble Costs.

XXXIII. And be it further enacted, That if any Person or Persons shall be sued or prosecuted for any thing done or to be done in pursuance of this Act, such Person or Persons may plead the General Issue, and give this Act and the special Matter in Evidence; and if the Plaintiff or Plaintiffs, Prosecutor or Prosecutors, shall become nonsuit, or forbear the Prosecution, or discontinue his, her or their Action, or if a Verdict shall pass against him, her or them, the Defendant shall have treble Costs, and shall have the like Remedy for the same as in Cases where Costs are by Law given to Defendants.

SCHEDULES TO WHICH THIS ACT REFERS

Schedule (A)

Asses.
Barley.
Beans.
Biscuit.
Bread.
Beaver and all Sorts of Fur.
Bowsprits.

Calavances.
Cocoa.
Cattle.
Cochineal.
Coin and Bullion.
Cotton Wool.

Drugs of all Sorts.
Diamonds and Precious Stones.

Flax.
Fruit and Vegetables.
Fustick and all Sorts of Wood for Dyers' Use.
Flour.

Grain of any Sort.
Garden Seeds.

Hemp.
Heading Boards.
Horses.
Hogs.
Hides.
Hay.
Hoops.
Hardwood or Mill Timber.

Indigo.

Live Stock of any Sort.
Lumber.
Logwood.

Mahogany, and other Wood for Cabinet Wares.
Masts.
Mules.

Neat Cattle.
Oats.

Pease.
Potatoes.
Poultry.
Pitch.

Rye.
Rice.

Staves.
Skins.
Shingles.
Sheep.

Tar.
Tallow.
Tobacco.
Turpentine.
Timber.
Tortoiseshell.

Wool.
Wheat.

Yards.

Schedule (B)

	£	s.	d.
	Sterling		
Barrel of Wheat Flour, not weighing more than 196 lbs. net Weight.	0	5	0
Barrel of Biscuit, not weighing more than 196 lbs. net Weight.....	0	2	6
For every Cwt. of Biscuit.....	0	1	6
For every 100 lbs. of Bread, made from Wheat or other Grain, imported in Bags or Packages.....	0	2	6
For every Barrel of Flour, not weighing more than 196 lbs. made from Rye, Peas or Beans.....	0	2	6
For every Bushel of Peas, Beans, Rye or Calavances.....	0	0	7
Rice, for every 100 lbs. net Weight.....	0	2	6
For every 1,000 Shingles, called Boston Chips, not more than 12 inches in Length	0	7	0
For every 1,000 Shingles, being more than 12 Inches in Length....	0	14	0
For every 1,000 Red Oak Staves.....	1	1	0
For every 1,000 White Oak Staves or Headings.....	0	15	0
For every 1,000 Feet of White or Yellow Pine Lumber, of One Inch Thick	1	1	0
For every 1,000 Feet of Pitch Pine Lumber.....	1	1	0
Other Kinds of Wood and Lumber, per 1,000 Feet.....	1	8	0
For every 1,000 Wood Hoops.....	0	5	3
Horses, for every 100£. of the Value thereof.....	10	0	0
Neat Cattle, for every 100£. of the Value thereof.....	10	0	0
All other Live Stock, for every 100£. of the Value thereof.....	10	0	0

(Seigniorial Tenure)

BATHURST TO DALHOUSIE.[1]

Downing Street,
7th Decr 1822

MY LORD,

It having been represented to me that Your Lordship had intended to refer home for instructions as to the mode in which the clause in the Canada Act passed in the last Session authorizing the change of Tenures was to be carried into execution I avail myself of this opportunity of acquainting Your Lordship that it appears to me very desirable that no delay should take place in carrying the provisions of the Act into effect according to such general principles and liberal construction as the Governor and Council may consider most advantageous for the Province, preserving on the one hand the just rights and interests of the Crown and on the other extending to individuals who are desirous of availing themselves of the Act every reasonable facility in effecting the object they have in view. My Under Secretary transmitted to Your Lordship the suggestions of Mr Chief Justice Monk upon the subject who had during the progress of the Act of last Session given it his particular attention and which suggestions were transmitted for Your Lordships information.

I have the Honor to be
My Lord,
Your Lordship's most obedient
Humble Servant

BATHURST

Lt General
The EARL OF DALHOUSIE
G C B
&c &c

[Endorsed] Downg St
7 Decr 1822
From
Lord Bathurst
Change of tenure to be carried into effect
if applied for, without reference to England

[1]*G. 12, pp. 147-148.*

PROPOSED ACT OF UNION.

Gordon to Ready.[1]

Downing Street 14th August 1822

My Dear Sir

I have before forwarded to you for the information of the Governor in Chief the proposed Canada Bill as amended in the Committee of the House of Commons before the debate upon it. By the present opportunity Printed Copies of the Act as finally passed and assented to by The King, are Officially transmitted to His Excellency by Lord Bathurst.

It will be observed that the clauses of the original Bill which relate to the union of the Legislatures of the two Provinces, are omitted in the Act which has been passed. These Clauses after the discussion in the House it was determined should be brought in as a separate Bill, and ordered to be printed and to lay over till the next Session, not with any *pledge* however of its being then followed up, which must depend on circumstances.

I hope I shall be able to inclose with this a few Copies in its integral shape, but if not it does not materially vary in substance from the omitted clauses I have above referred to.

I have the Honor to be
My Dear Sir,
Your most obedient
Humble Servant

ADAM GORDON

Lieut. Colo Ready
&cr &cr

[1] *G. 12, pp. 83-84.*

A

BILL[1]

[As amended by the Committee]

For uniting the Legislatures of the Provinces of *Lower* and *Upper Canada.*

NOTE.—*The Figures in the Margin denote the number of the Folios in the written Copy.*

Preamble. 1 WHEREAS in the present situation of the Provinces of *Lower* and *Upper Canada,* as such with relation to *Great Britain* as to each other, a joint Legislature for both the said Provinces would be more likely to promote their general security and prosperity than a separate Legislature for each of the said Provinces, as at present by law established;

Be it therefore Enacted by the KING's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, THAT so much of an Act passed in the thirty-first year of the reign of his late Majesty King *George* the Third, intituled, "An Act to repeal certain parts of an Act passed in "the fourteenth year of his Majesty's reign, intituled, 'An Act for "'making more effectual provision for the Government of the Prov-"'ince of *Quebec* in *North America,* and to make further provision "'for the Government of the said Province,'" as provides for the composing and constituting within each of the said Provinces respectively, a Legislative Council and Assembly, and for the passing of laws by the Legislative Council and Assembly of each Province, shall be and the same is hereby repealed, except in so far as the same or any of the provisions thereof, may by this present Act be continued or applied to the purposes of the joint Legislature to be constituted in manner hereinafter mentioned: Provided also, that so much of an Act passed in the fourteenth year of the reign of his said late Majesty, intituled, "An Act for making more effectual provision "for the Government of the Province of *Quebec* in *North America,*" 3 as is repealed by the said Act passed in the thirty-first year aforesaid, shall be deemed and taken to be, and shall remain repealed.

So much of 31 Geo. 3, c. 31, as provides a Legislature for each of the Provinces of Lower and Upper Canada, repealed.

2

Henceforth to be one joint Legislative Council, and one joint Assembly for both Provinces.

And be it further Enacted, That from and after the passing of this Act, there shall be within the said two Provinces, and for the same jointly, one Legislative Council and one Assembly, to be composed and constituted in manner hereinafter described, and which shall be called "The Legislative Council and Assembly of the *Canadas;*" and that within the said Provinces, or either of them, His Majesty, His Heirs or Successors, shall have power, during the continuance of this

[1]*Q. 163, pp. 21-25.*

Act, by and with the advice and consent of the said Legislative Council and Assembly of the *Canadas*, to make laws for the peace, welfare and good government of the said Provinces, or either of them, such laws not being repugnant to this Act, nor to such parts of the said Act passed in the thirty-first year aforesaid, as are not hereby repealed; and that all such laws being passed by the said Legislative Council and Assembly, and assented to by His Majesty, His Heirs or Successors, reassented to in His Majesty's name by the Governor-in-
4 Chief in and over the said provinces of *Lower* and *Upper Canada*, or in case of the death or absence of such Governor-in-Chief, by the Lieutenant Governor of the Province of *Upper Canada* for the time being, or in case of the death or absence of such Lieutenant Governor, then by the Lieutenant Governor of *Lower Canada* for the time being, or in case there shall be no Lieutenant Governor at such time resident in the Province of *Lower Canada*, then by the person administering the government thereof for the time being, shall be and the same are
5 hereby declared to be, by virtue of and under the authority of this Act, valid and binding to all intents and purposes whatever within the said two Provinces.

Joint Legislative Council to consist of the present Members of both Councils.

And be it further Enacted, That the present members of the Legislative Councils of *Lower* and *Upper Canada* shall, by virtue of this Act, and without any new or other commissions for that purpose, constitute together the Legislative Council of the *Canadas*, which said members shall take precedence in the joint Legislative Council according to the date of the instruments by which they were originally summoned to the Legislative Councils of the two Provinces respectively; and that it shall also be lawful for His Majesty, His Heirs or Successors, from time to time, by an instrument under his or their sign manual, to authorize and direct the said Governor-in-Chief, or in case
6 of his death or absence, such other person, and in such order respectively as is hereinbefore directed, to summon to the said Legislative Council, by an instrument, under a seal to be transmitted by His Majesty to the Governor-in-Chief, or under any other seal which the said Governor-in-Chief shall be by His Majesty directed to use for the purposes of this Act, and which shall be called the Great Seal of the *Canadas*, and shall be applied only to the purposes directed by this Act, such other person or persons as His Majesty, His Heirs or Successors, shall think fit; and that every person who shall be so summoned to the said Legislative Council, shall thereby become a member thereof.

Other persons may be summoned.

Such Persons only shall be summoned as directed by 31 G. 3.

And be it further Enacted, That such persons only shall be summoned to the said Legislative Council, as by the said above-mentioned Act, passed in the thirty-first year aforesaid, are directed to be summoned to the Legislative Council of the said two Provinces respect-
7 ively; and that every member of the said Legislative Council shall hold his seat for the same term, and with the same rights, titles, honours, ranks, dignities, privileges and immunities, and subject to

the same provisions, conditions, restrictions, limitations and forfeitures, and to the same mode of proceeding, for hearing and determining by the said Legislative Council all questions which shall arise touching the same, as are in the said Act, passed in the thirty-first year aforesaid, mentioned and contained, with respect to the members thereby directed to be summoned to the Legislative Council of the two Provinces respectively.

Governor to appoint and remove the Speaker of the Legislative Council.

8 And be it further Enacted, That the Governor-in-Chief, or in case of his death or absence, such other person, and in such order respectively as is hereinbefore directed, shall have power and authority from time to time, by an instrument under the Great Seal of the *Canadas*, to constitute appoint and remove the Speaker of the said Legislative Council.

Joint Assembly to consist of the present Members of both, and to continue until 1 July 1825, unless sooner dissolved.

And be it further Enacted, That the members at present composing the Assemblies of the said two Provinces shall, together with such new members as shall or may be returned for either of the said Provinces respectively in manner hereinafter mentioned, form and constitute the Assembly of the *Canadas*, and shall be and continue until the first day of July one thousand eight hundred and twenty-five, unless sooner dissolved; and that in case of a dissolution of the said 9 Assembly, or of vacancies occurring therein, members shall be returned from the same counties and places, and in the same manner, and in the same numbers, except as hereinafter otherwise provided, as now by law they are returned within the two Provinces respectively.

Act of Upper Canada, 60 G. 3, to continue in force.

AND whereas an Act was passed by the Provincial Legislature of *Upper Canada*, in the sixtieth year of the reign of his said late Majesty, intituled, "An Act for increasing the Representation of the "Commons of this Province in the House of Assembly;"[1] BE it therefore further Enacted, That the said Act, and all the provisions therein contained, except as hereinafter otherwise provided, shall remain in full force and effect, and shall be applied to the representation of the said Province of *Upper Canada* in the joint Assembly, in like manner as the same were applicable to the representation thereof in the 10 Assembly of the said Province of *Upper Canada* before this Act was passed.

Governor of Lower Canada may erect new Counties out of the Townships to be represented in the Assembly.

And be it further Enacted, That it shall and may be lawful for the Governor, Lieutenant Governor, or person administering the government of the said Province of *Lower Canada* for the time being, from time to time as he shall judge expedient, from and out of that part of the said Province of Lower Canada which has been erected into townships since the number of representatives for the said Province was settled by proclamation, to form and erect new counties, by instrument or instruments under the Great Seal of the said Province, each such new county to consist of not less than six townships; and that when and so often as any such new county shall be formed and erected as aforesaid, the Governor, Lieutenant Governor, or person administering the government of the said Province of *Lower Canada*,

[1] 60 Geo. III, cap. 2.

shall issue a writ for the election of one member to serve for the same in the assembly; and that whensoever the said Governor, Lieutenant Governor, or person administering the government as aforesaid, shall deem it expedient that any such new county, or any county heretofore erected within the said Province of *Lower Canada*, and at present represented by only one member, shall be represented by two members, he shall in like manner issue writs for that purpose: Provided always, that no subdivision of any counties now erected or to be hereafter erected within either of the said Provinces, except as hereinbefore provided with respect to the said townships, shall extend or be construed to extend to increase the number of representatives for such counties: Provided also, that the number of representatives for each province shall not exceed sixty.

No Act to alter the number of Representatives to be passed, unless by Two-thirds of both Houses.

And be it further Enacted, That no act by which the number of representatives of either Province shall be altered, shall hereafter be passed by His Majesty, by and with the advice and consent of the said Legislative Council and Assembly, unless the same shall have been passed by two-thirds at least of the members present at the question for the second and third reading of the same in the said Legislative Council and Assembly respectively.

Provisions of 31 G. 3, respecting Elections, to remain in force.

And be it further Enacted, That all and every the provisions and regulations respecting the appointment and nomination, duties, privileges and liabilities of returning officers for either of the said Provinces respectively, and respecting the eligibility, qualification and disability of persons to sit as members in the said Assembly, or to vote on the election of such members, and respecting any oath to be taken by candidates or voters at such elections, and respecting all other proceedings at such elections, and respecting the times and places of holding such elections, as are contained in the said above-mentioned Act, passed in the thirty-first year aforesaid, except in so far as the said provisions and regulations are hereby in anywise altered, shall remain and continue in force in both of the said Provinces; and that all and every the provisions and regulations respecting the objects above enumerated, or any of them, which are contained in any Act or Acts of the provincial Legislatures, which are now in force in either of the said Provinces respectively, shall remain and continue in force within such Province, except as the same are hereby in anyways altered, until otherwise provided for by the joint Legislature.

Governor may summon a new Assembly.

And be it further Enacted, That when and so often hereafter as it may be necessary to summon and call together a new Assembly for the said two Provinces, it shall and may be lawful for the said Governor-in-Chief, or in case of his death or absence, then for such other person, and in such order respectively as is hereinbefore directed, by an instrument under the said Great Seal of the *Canadas*, to summon and call together the said Assembly as hereinafter expressed and provided.

And shall issue Writs for the election of Members, as directed by 31 Geo. 3.

And be it further Enacted, That Writs for the election of members to serve in the said Assembly, shall be issued by the Governor, Lieutenant Governor, or person administering the government of the Province within which such members shall be chosen respectively, in the same manner and directed to the same officers, and returnable within the same period, as in and by the said Act made and passed in the thirty-first year aforesaid, is directed and provided.

Qualification in future to be real Property, to the value of £500 sterling.

And be it further Enacted, That on the first general election of members for the said Assembly, which shall take place from and after the passing of this Act, and on all subsequent elections, whether general or for particular places, in cases of vacancy, which shall be holden in either of the said Provinces, no person shall be capable of being elected, who shall not be legally possessed to his own use and benefit, of lands and tenements within one or other of the said Provinces, of the value of Five hundred pounds sterling over and above all rents charges and incumbrances which may affect the same, such lands and tenements being by him held in freehold, in fief or in roture; and that every candidate at such election, before he shall be capable of being elected, shall, if required by any other candidate, or by the returning officer, take an Oath in the following form, or to the following effect;

Oath to that effect.

"I, *A.B.* do Swear, That I am legally and *bonâ fide* pos-
"sessed to my own use and benefit, of lands and tenements
"within the Provinces of *Canada*, of the value of
" sterling, over and above all rents charges
"and incumbrances which may affect the same; and that the
"said lands and tenements are by me held in freehold, in fief,
"or in roture [*as the case may be*]; and that I have not obtained
"the same fraudulently, for the purpose of enabling me to be
"returned Member to the Assembly of the *Canadas*; and also
"that I am otherwise qualified, according to the provisions of
"law, to be elected and returned to serve as a Member thereof."

Provided always, That nothing in this Act contained shall be construed to affect any Act now in force in either of the said Provinces respectively, relating to the qualification (other than as respects property) of any candidate or voter at elections.

Persons swearing falsely guilty of perjury.

And be it further Enacted, That if any person shall knowingly and wilfully take a false oath respecting his qualification, either as candidate or voter at any election as aforesaid, and shall thereof be lawfully convicted, such person shall be liable to the pains and penalties by law inflicted on persons guilty of wilful and corrupt perjury in the Province in which such false oath shall have been taken.

Trials of contested Elections.

And be it further Enacted, That whenever hereafter any question shall arise touching the validity of the election or return of any person in either Province to serve in the Assembly, such question shall be tried in the Joint Assembly, according to the mode of pro-

ceeding now established by law in that Province in which the disputed election or return shall have been made, until a uniform course of proceeding shall be duly established for both Provinces.

Governor may summon Two Members of the executive Council of each Province to the Assembly.

And be it further Enacted, That it shall and may be lawful for the said Governor-in-Chief, or in case of his death or absence, then for such other person, and in such order respectively as is hereinbefore directed, if at any time he shall deem it expedient, to summon and authorize, by an instrument under his hand and seal, two members of the executive Council of each Province to sit in every Assembly with power of debating therein, and with all other powers, privileges and immunities of the members thereof, except that of voting.[1]

Joint Legislature to be summoned not later than 1st September 1824, and once every twelve months afterwards.

And be it further Enacted, That the said Legislative Council and Assembly shall be called together for the first time at some period not later than the first day of September one thousand eight hundred and twenty-four, and once afterwards in every twelve calendar months, and that the said Governor-in-Chief, or in case of his death or absence, such other person, and in such order respectively as is hereinbefore directed, shall and may convene the first and every other session of the said Legislative Council and Assembly, at such places within either Province, and at such times, under the restrictions aforesaid, as he shall judge most conducive to the general convenience, giving due and sufficient notice thereof, and shall have power to prorogue the same from time to time, and to dissolve the same by proclamation or otherwise whenever he shall deem it necessary or expedient.

Every future Assembly to continue five Years.

And be it further Enacted, That every Assembly hereafter to be summoned and chosen, shall continue for five years, from the day of the return of the writs for choosing the same, and no longer; subject nevertheless to be sooner prorogued or dissolved by the said Governor-in-Chief, or in case of his death or absence, by such other person, and in such order respectively as is hereinbefore directed.

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2 Members of the Ex. Council in each Colony to be members of the Assembly with a vote.

[1]The following commentary upon this most interesting clause is to be found among the "Notices upon a Bill ..." *Q. 163, pp. 174-176:*

That the Executive Government should possess the means of participating upon all the measures of Governmt brought before the Assembly, needs no other proof, than the open and declared efforts of the Canadians "to exclude every officer of the Kings Governmt from that body", And the factions raised and measures pursued, these Ten or Fifteen years passed, has evinced that every effort to obtain a seat, in that body, by such a character has been unsuccessful. consequently that the King's Governmt has not had the communication, with the Assembly necessary to conduct the public business. The measures of the Assembly "The Commons of the People" and those of the Governmt have been argued to be, wholly distinct in Interest, and the Crown has been excluded from the power in that essential part of the Legislature and Government, of removing factious aspersions, or assuaging Anarchy that disturb and defeat the salutary purposes of a Colonial and Loyal Legislature.

Unless some few members of the Executive Council and Governt should by right, have a deliberative voice in the Assembly—Altho' without that of voting—in what manner can the measures of administration & Governt be effectively brought forward, explained, or supported; or those, adverse to the public weal, represented in their real estate, and the resulting consequences, of contrary pursuits exposed to real and impartial reason, if the Servants of the Crown are to be excluded from the Duties of the Executive Government?

Experience has convinced that in the Colonial Legislature of Canada, a right should be declared, "That the King's Ministers" if so they must be termed should have a deliberative power in the Assembly of that Legislation." [Sic.]

Majority of Votes to decide.

And be it further Enacted, That all questions which shall arise in the said Legislative Council or Assembly, except in the cases herein otherwise provided, shall be decided by the majority of voices of such members as shall be present; and that in all cases where the voices shall be equal, the Speaker of such Council or Assembly shall have a casting voice.

Oath prescribed by 31 G. 3, to be taken.

Provided always, and be it further Enacted, That no member either of the Legislative Council or Assembly shall be permitted to sit or vote therein, until he shall have taken and subscribed the oath
21 prescribed for that purpose by the said Act passed in the thirty-first year aforesaid, before a person duly authorized to administer the same, as in and by the said Act is directed.

Royal Assent to be declared or withheld, as prescribed by 31 G. 3.

And be it further Enacted, That any Bill which shall be passed by the Legislative Council and Assembly shall be presented for His Majesty's assent to the said Governor-in-Chief, or in case of his death or absence, to such other person, and in such order respectively, as is hereinbefore directed, who shall, according to his discretion, declare or withhold His Majesty's assent to such Bill, or reserve such Bill for the signification of His Majesty's pleasure thereon, subject always to the same provisions and regulations with respect to Bills which may either be assented to, or from which His Majesty's assent may be withholden, or which may be reserved as aforesaid, as the case may be, as in and by the said Act, passed in the thirty-first
22 year aforesaid, are contained and enacted with regard to such Bills respectively.

All laws now in force to continue, except as hereby repealed or altered.

And be it further Enacted, That all laws, statutes or ordinances which are in force at the time of passing of this Act, within the said Provinces or either of them, or in any part thereof respectively, shall remain and continue to be of the same force, authority and effect in each of the said Provinces respectively as if this Act had not been made, except in as far as the same are repealed or varied by this Act, or in so far as the same shall or may be hereafter by virtue of and under the authority of this Act repealed or varied by His Majesty, His Heirs or Successors, by and with the advice and consent of the said Legislative Council and Assembly.

Privileges of Members to continue.

And be it further Enacted, That all rights, privileges, immunities and advantages which are at present legally exercised and
23 enjoyed by the members of the Assemblies of *Lower* and *Upper Canada* respectively, shall continue to be exercised and enjoyed by them as members of the said Assembly of the *Canadas*, in as full and as ample a manner as heretofore: Provided always, That no privilege of the said Legislative Council or of the said Assembly, shall extend or be construed to extend to authorize the imprisonment of any of His Majesty's subjects not being members of the said Legislative Council or of the said Assembly, or officers or servants of the said bodies respectively, until an Act be passed declaratory of the rights and privileges of the said bodies in this respect.

Henceforth all written Proceedings, and after 15 Years, all Debates to be in English alone.

And be it further Enacted, That from and after the passing of this Act, all written proceedings of what nature soever of the said Legislative Council and Assembly, or either of them, shall be in the *English* language and none other; and that at the end of the space of fifteen years from and after the passing of this Act, all debates in the said Legislative Council or in the said Assembly, shall be carried on in the *English* language and none other.

Persons professing the Religion of the Church of Rome, not to be affected.

AND whereas by the said Act of the Imperial Parliament of *Great Britain*, made and passed in the fourteenth year aforesaid, intituled, "An Act for making more effectual provision for the "government of the Province of *Quebec*, in *North America*," it was amongst other things, declared, That His Majesty's subjects, professing the religion of the church of *Rome* of and in the said Province of *Quebec*, might have hold and enjoy the free exercise of the said religion, subject to the King's supremacy as in the said Act mentioned, and that the clergy of the said church might hold receive and enjoy their accustomed dues and rights with respect to such persons only as should profess the said religion; BE it therefore further Enacted and Declared, That nothing in this Act contained, nor any Act to be passed by the said joint Legislature, nor any resolution or other proceeding of the said Legislative Council or Assembly, shall in anywise affect or be construed to affect the free exercise of the religion of the Church of *Rome* by His Majesty's subjects professing the same, within either of the said Provinces, but the same may continue to be exercised, and the clergy of the said church and the several curates of each respective parish of the said Province of *Lower Canada*, now performing the clerical duties thereof, or who shall hereafter, with the approbation and consent of His Majesty, expressed in writing by the Governor or Lieutenant Governor, or persons administering the government of the said Province of *Lower Canada* for the time being, be thereto duly collated appointed or inducted, may continue to hold receive and enjoy their accustomed dues and rights in as full and ample manner, to all intents and purposes, as heretofore, and as is provided and declared by the said last-mentioned Act.

Certain provisions of 31 G. 3. to extend to Acts to be passed by the joint Legislature.

And be it further Enacted, That all the provisions, regulations and restrictions made and imposed in and by the said Act, passed in the thirty-first year aforesaid, with respect to any Act or Acts containing any provisions of the nature therein particularly mentioned and specified, shall and the same are hereby declared to extend and apply to each and every Act which shall be passed by the said Legislative Council and Assembly, and which shall contain any provisions of the nature in and by the said last-mentioned Act set forth and specified.

Accounts, &c. to be laid before the Legislature.

And be it further Enacted, That all and every the accounts, returns, papers, and documents, which by any Act now in force in either Province, are directed to be laid before the Legislature thereof respectively, shall, under the penalties therein provided, be in like manner transmitted and laid before the Legislature of the *Canadas*, during the continuance of such Acts.

Salaries of Officers of the Legislature to continue till otherwise provided for.

And be it further Enacted, That the officers and other persons receiving salaries or allowances in respect of services rendered by them in the Legislatures of their respective Provinces, shall continue to receive such salaries and allowances as heretofore, until otherwise provided for by any Act which shall be passed by His Majesty, His Heirs or Successors, with the advice and consent of the Legislative Council and Assembly of the *Canadas*.

Petition from Eastern Townships for Union.[1]

To the Honorable the Knights, Citizens, and Burgesses, representing the Commons of the United Kingdom of Great Britain and Ireland in Parliament assembled.

The Petition of the Subscribers, His Majesty's dutiful and loyal subjects, of British birth or descent, Inhabitants of the Townships of Durham, Stanbridge, St. Armand, Sutton, Potton, Stanstead, Barnston, Barford, Hereford, Farnham, Brome, Bolton, Hatley, Compton, Clifton, Granby, Shefford, Stukely, Oxford, Ascott, Eaton, Newport Bury, Hampden, Milton Roxton, Durham, Melborne, Windsor, Shipton, Stoke, Dudswell, Simpson, Kinsey Grantham, Wickham, Wendover Brompton, and other Townships and places, situated on the South-East side of the River St. Lawrence, in the Province of Lower Canada.

Humbly Sheweth,

That your Petitioners have learnt with the most heartfelt satisfaction and the most profound gratitude, that a Bill was introduced in the Honorable the House of Commons, at the last Session of the Parliament of the United Kingdom, for uniting the Provinces of Upper and Lower Canada under one Legislature: a measure to which the Inhabitants of the Townships of Lower Canada look forward as the only effectual means of terminating the difficulties and troubles under which they have labored in times past, and of preventing the evils with which a continuation of the present state of things would threaten them for the time to come.

That the situation of the Inhabitants of the Townships is different from that of any other portion of the British Empire, and is likely to prove most unfortunate and disastrous for themselves and their posterity, unless the Legislative aid of the Land of their Ancestors be extended to relieve them—as will be briefly shewn in the following statement. The Province of Lower Canada, according to its present condition, may be separated into two parts, viz: First, the Seignories or French Lower Canada, which comprehends a narrow tract of land on each side of the River St. Lawrence, varying in breadth from ten to forty Miles—

[1] *Q. 163, pp. 147-159.* For the connection between this Act and the revenue dispute between Upper and Lower Canada, see *p. 105.*

And secondly, the Townships, or English Lower Canada, which comprehends the remainder of the Province, and is more extensive, and capable of containing a far greater population than the Seignories or French Lower Canada. The Seignorial part of Lower Canada whose population may be considered as about half filled up, is inhabited chiefly by Canadians, whose origin and language are French, but contains besides these, a population of about 40,000 Inhabitants of British origin. The Townships, or English Lower Canada, are peopled wholly by Inhabitants of British birth and descent, and American Loyalists amounting at present to about 40,000 souls, who have no other language than that of their British Ancestors, who inhabit Lands granted under the British tenure of free and common soccage, who have a Protestant Clergy, for whose maintenance a portion of those lands is set aside, and who, notwithstanding, are subjected to French Laws, (the Custom of Paris) of which they know nothing, compiled in a language with which they are unacquainted.

In addition to the evil of subjection to foreign laws in a foreign language, the Townships, or English Lower Canada, labor under the further difficulty of having no Courts within their own limits, for the administration even of those foreign laws, but are compelled for the most trifling legal redress, to resort to the Courts established at the Cities of Quebec, Montreal, or Three Rivers, in Seignorial Canada, at a distance frequently from 100 to 150 miles, thro' a country where the travelling, by reason of the inadequacy of the laws regarding communications, is frequently difficult and dangerous and to complete the measure of their grievances, the Townships are *de facto* without any representation whatever in the Provincial House of Assembly in Lower Canada. Their complaints to the Provincial Assembly have been always treated with contempt or indifference, nor can your Petitioners account for their being placed, as it were, almost out of the pale of Civil Government, by a neglect so different from the course pursued in the Legislatures of other British Provinces, except on the supposition that the French Canadian House of Assembly has not been desirous that Emigrants from Britain or of British origin should have inducements to seek an asylum or become settlers in Lower Canada. If such indeed were the object, it has not failed of partial success; as of the many thousand Emigrants who, within the last few years, have arrived from Great Britain, scarcely one thousand have settled in the Townships of Lower Canada; but greater numbers of them have gone into the United States, considering possibly, that they should there find themselves in a less foreign country, than in this British Colony under its present circumstances, and under the foreign aspect of the Representative branch of its Legislature.

Your Petitioners will not enlarge upon the general statement they have given of their condition, by entering into the detail of the numerous hardships and difficulties with which they have had to contend, altho' sensible that the recital would call forth commiseration. They will content themselves with stating, that as settlements under these English Tenures have been commenced, as immense tracts still remain to be settled, and as the population of Lower Canada, is trifling compared to the amount which it is capable of attaining, there can be no sound reason for rearing up any portion of the Province so as, at its maturity, to constitute a nation of foreigners, or for continuing a system

calculated to deter Britons and their descendants from settling upon the waste Lands of the Crown—In the management of Colonies, as in the management of youth, prudence would seem to dictate that the lasting interests of the future maturity, not the momentary inclinations of the present condition should be considered of the deepest import. Already, within a recent period, nearly a hundred thousand Emigrants of British birth have made Lower Canada only a place of transit; who, if the foreign aspect of the Legislature had not urged them to take an abode elsewhere, might have augmented the strength and means of the English population in the Province. But notwithstanding the past checks to colonial increase, unless similar causes are allowed to operate hereafter, future Emigrants and their descendants joined to the English already established here, may ultimately form a great majority of the inhabitants, and render the country in fact, as it is in name, a British Colony. And in the attainment of this happy result, no injury could be done to the just rights of others; nor would even any prejudices be affected, except those delusions circulated and fostered by demagogues, "that the Canadians of French extraction are to remain a distinct people," and that they are "entitled to be considered a Nation"—prejudices, from which it must follow as a necessary consequence, that the Province of Lower Canada (of which not one sixth part is settled) should be deemed their National Territory, where none but those willing to become French ought to be allowed to establish themselves—prejudices, which, however absurd they may appear, will obtain strength and influence, if not speedily and completely discouraged, and will be found not only incompatible with Colonial duty and allegiance, but also dangerous to the future safety of the adjoining Colonies and subversive of the rights of all the Inhabitants of the Townships, as well as of all the English settled in Seignorial Canada, thro' whose hands the entire trade with the Mother Country is conducted.

Your Petitioners, the Inhabitants of English Lower Canada, had always flattered themselves that no laws would be imposed or continued on that portion of the Country, having a tendency to compel them to resemble a foreign nation, and to deprive them of the characteristics of their British Origin; and their confidence on this occasion was encreased by their recollection of the promises of his late Majesty, to give English laws to his subjects settling in Canada, and by the exception (an exception never yet enforced in practice) contained in the Quebec Act of 1774, declaring that the Provisions of that Act, establishing French laws "should not extend to lands to be thereafter granted in Free and Common Soccage" a tenure which exists exclusively in the Townships.

Your Petitioners felt, and they trust it is a feeling which cannot fail to meet with sympathy in the hearts of their countrymen, and the countrymen of their Ancestors in Britain, that the knowledge of their native English Language ought to be sufficient to enable them to learn their rights and to perform their duties as faithful subjects, while they resided under British tenures in what is, at least in name, a British Colony. They felt that one great and glorious object of Nations rearing up and protecting Colonies, must be the establishment of a people who should perpetuate in after ages the honored resemblance of the Parent State; and they felt that it could neither be consistent with the dignity

nor the Interests of Great Britain, to rear up a Colony to be hereafter in language and in laws a representative of France, while France was exempted from all the expence of its protection. They considered the Townships of Lower Canada, now inhabited solely by Settlers of British birth and origin, speaking only the English Language, and having a Protestant Clergy upon whom one seventh of the land is bestowed—as possessing a sacred claim upon the British Government for protection, against the painful and humiliating prospect that their posterity might be doomed to acquire the language and assume the manners and character of a Foreign people. And they also considered that the right of the Townships to Representation in the Provincial Assembly, would not have been withheld from them in any other British Colony, nor perhaps even here, had not their language and descent been British.

Your Petitioners would gladly limit their solicitations to one point—that of being allowed a Representation in the Provincial Parliament, proportioned to the consequence and growing importance of the extensive Districts they inhabit, —if a sober view of their future safety would permit them to confine themselves to that object; but it is possible that even this sacred and inestimable privilege might, when accorded, be deprived of much of its advantage and efficiency towards procuring the settlement of the wild lands by Emigrants from Britain, in consequence of the influence of the majority of French Canadians, which would still be found in the House of Assembly of Lower Canada, who, in the midst of professions of attachment to the Mother Country, seek to preserve themselves a separate and distinct people. To secure and preserve to the Colony and to the Mother Country, the full benefit which would be likely to arise from the establishment of principles calculated to produce a gradual assimilation of British feelings among all the Inhabitants of whatever origin it would be essentially necessary that a Legislative Union between the Provinces of Upper and Lower Canada should take place.

There are many reasons in addition to the one your Petitioners have just assigned, which render the Legislative Union of the Two Provinces indispensable for their common prosperity, and which cause that measure to be most earnestly desired by all the Inhabitants of both, who are not influenced by natural prejudices, which ought to be extinguished, or by local or private interests, which are unworthy to be weighed against the general benefits to be obtained from the Union.

Your Petitioners humbly represent that no arguments can be urged against the Union by the French Canadians, which will not, when analized, be resolvable into this real meaning, that they desire to remain a separate people, thereby ultimately to become a French Nation, or as they have denominated themselves, the "*Nation Canadienne*". The Canadians, without owing any of their increase to Emigration, have more than twice doubled their numbers since the Conquest; and altho' they might, without any injustice or deprivation of actual rights, have been by this time assimilated to their British fellow subjects, they are nevertheless at this day, with but a few individual exceptions as much foreigners in character as when this event took place–and must ever continue so, were the present state of things to be permanent– The present crisis therefore offers this alternative to Great Britain, either by uniting the Provinces, to hold

out inducements to the French to become English, or by continuing the separation to hold out inducements to the English in Lower Canada to become French, and the question is not whether a country already peopled is to renounce its national feelings and characteristics, as the French Canadians may endeavor to represent, but whether a country for the most part waste and to be hereafter chiefly peopled by a British race, is to assume the character, language, and manners, of a foreign nation. Should the latter course be preferred, Great Britain will be rearing up a people of foreigners, to become at no distant period, from their rapidly increasing population, a scourge to its adjoining Colonies–whereas, if the Union be adopted, it would ultimately remove national prejudices and hostility, derived from difference of origin, and consolidate the population of both Provinces into one homogeneous mass, animated by the same views for the public interest, and the same sentiments of loyalty towards their Common Sovereign.

The Geographical situation of the two Provinces and the relations which nature has established between them absolutely and indispensably require their union under one Legislature, for they have but one outlet to the sea, and one channel of Communication with the Mother Country–The only key of that communication, the only sea-port is in the possession of Lower Canada, and with it the only means by which, for a length of time in a new Country, a revenue can be raised for the support of Government, To place, or to leave the only key of communication, the only source of revenue, exclusively in the hands of a people like the French Canadians, anti-commercial in principle, and adverse to assimilation with their British fellow subjects, must be extreme impolicy nor can the checks upon the imposition and repeal of import duties provided by the Act of the last Session of the Imperial Parliament, be more than a temporary remedy–inasmuch as Upper Canada is thereby only entitled to a species of veto, and has no initiative or deliberative voice in the enactments–nor indeed can human wisdom be adequate to devise such a system of revenue upon imports, while the Provinces shall remain separate, as will not give unfair and unequal advantages to the one or the other, and of necessity produce irritation and enmity.

Your Petitioners further humbly state, That the French Canadians have been long admitted to the enjoyment of the freedom and the rights of British Subjects, rights far more extensive than the utmost they could have hoped for had they continued Colonists of France; but rights and duties are reciprocal; wherever the former exist, the latter are obligatory: and while the freedom and protection of Britain are bestowed upon Canadians, it can neither be unfair nor ungenerous to require in return, the existence of such an amended constitution as shall encourage a portion of our Brethren from Britain, to establish themselves and their posterity upon the Crown Lands in Lower Canada–From a union of the Provinces no individual could reasonably complain of injury, no right would be taken away, no just pretensions would be set aside and even no prejudice would be molested, save only such as might be found in those who cherish visionary views of the future existence of a Gallo-Canadian nation, which the Union would at once and for ever dispel.

To discover with certainty what are the real feelings which excite opposition to the Union (however diversified the pretexts assigned may be) it would only be requisite to consider, whether if the population were all of the same origin, in Provinces, situated as the Canadas are with respect to each other, any objections to the measure would be made? The answer is obvious, there would be none–And if the real motives of opposition on the part of our French Canadian fellow subjects, whether openly avowed or speciously disguised, arise from the intention of continuing or constituting separate people, which would perpetuate among us the disastrous national distinctions of English & French, they form the strongest possible reasons in favor of the Union. Your Petitioners had humbly hoped, that the guardian care of the Parent State would, under Providence, secure her Colonies in this part of the Globe from the ultimate danger of those national animosities and distinctions which have existed for so many ages, and proved such fertile sources of evil to Britons in Europe. And entertaining as they do, the most perfect confidence that the salutary measure of the Union of the Canadas would in the most equitable and beneficial manner secure their posterity from the evils they have mentioned, they humbly conceive that the honour, as well as the humanity of the Mother Country, requires it to be effected, while it is yet easily practicable, before the population shall be formidable in numbers, and before continually recurring exasperations shall have rendered animosity bitter and hereditary.

Your Petitioners therefore most humbly pray that an Act be passed to authorise the Provincial Executive Government to divide the Townships of Lower Canada into Counties, entitled to elect Members, so as equitably to provide for the interests of their future population according to the extent of their territory, and also to unite the Provinces of Upper and Lower Canada under one Legislature in such manner as may allow of Representation proportioned in some measure to territorial extent, which thereby will provide for the growing state of the Country, and also of necessity be ultimately proportioned to wealth and population.

And your Petitioners, as in duty bound,
will ever pray, &c – &c.

Petition from Quebec, for Union.[1]

To The King's Most Excellent Majesty *The Petition of the Undersigned Seigniors, Magistrates, Members of the Clergy, Officers of Militia, Merchants, Landholders, and others, Inhabitants of the City and District of Quebec, Province of Lower Canada.*

Humbly Sheweth,

That your Petitioners have learnt with the greatest satisfaction, that Your Majesty has taken into your Gracious Consideration the State of the Provinces of Upper and Lower Canada, with a view to adjust certain differences relating to matters of Revenue complained of by the Province of Upper Canada; and

[1] *Q. 161, pp. 330-335.*

as it appears that Your Majesty's Government in the course of its inquiry into the sources of these differences, has become satisfied of the necessity of some change being made in the Constitution of these Provinces, but has postponed the adoption of final measures in order to give time to the people thereof to express their sentiments, your Petitioners beg leave humbly to approach Your Majesty with a Statement of various Evils under which they have labored for some years and from which they have no hope of relief except by the interposition of your Majesty and the Imperial Parliament.

The experience of thirty years has now demonstrated the impolicy of the Act of the British Parliament 31 Geo. III. Cap. 31, by which the late Province of Quebec was divided into the Provinces of Upper and Lower Canada. To this Division your Petitioners ascribe the present ineffective state of the Legislature, and the want of those necessary measures for diffusing throughout the whole population of the Country feelings becoming their character as British Subjects, and introducing that general spirit of improvement, which encouraged by the Commercial System, universally pervades and invigorates other British Colonies. This division has created a difference of interest between the Provinces in matter connected with Revenue highly injurious to both, inevitably producing a spirit of dissension and animosity, and infusing into the Legislatures principles of a narrow and selfish policy, adverse to the general developement of their resources, and in an especial manner to the improvement of the channels of intercourse between them; and it is essential here to notice, that nearly the whole of the Revenue of the two Provinces arises from the duties levied on Merchandize imported at the Port of Quebec, under Laws enacted by the Legislature of the Lower Province. It has also, from the controul which the Geographical situation of the Lower Province enables it to exercise over the trade of the Canadas, placed the export Trade of the Upper Province at its mercy, being subject to such regulations and restrictions at the Shipping Port, as its Legislature may choose to impose: From this circumstance, and from the feeble attempts made to improve the grand natural channel of the Canadas, strikingly contrasted with the enterprize and energy evinced by the neighbouring State of New York in the rapid formation of Canals, together with the indifference manifested on this subject by the Legislature of the Lower Province: your Petitioners have just reason for alarm, that if a similar system be persisted in, it may tend in a most injurious degree to increase the Commercial Intercourse of the Upper Province with the United States, and divert the enterprize and trade of its inhabitants into a foreign channel, and from these causes your Petitioners not only apprehend the immediate loss of beneficial Trade, but that the gradual effect would be to interweave the interests of the Upper Canadians with those of the neighbouring States, thereby alienating their minds from the people of this Province and weakening their affection for your Majesty's Government, notwithstanding their present known and tried loyalty.

The Legislature of this Province has for a long time past been agitated by dissensions, and their deliberations so much interrupted thereby, that Trade, Agriculture, Education and other objects of general interest have been neglected. There exists no Law for the Registry of Lands and Mortgages, so necessary for security in commercial transactions, no Insolvent Debtor's Act, and your Peti-

tioners have looked in vain for a Law to provide for the unrepresented state of the Townships, a fertile and valuable portion of this Province, settled by Inhabitants of British origin; of these Legislative Enactments and many others necessary to quicken the enterprize and industry of Commercial Country [sic] your Petitioners entertain little hope, until a Reunion of the Provinces shall have weakened the influence which has hitherto prevented their adoption in our statute book. The existence of this influence, Your Petitioners chiefly attribute to the impolitic division of these Provinces, which instead of rendering it the interest, as it is the duty of every Individual of the community to concur in measures to assimilate the whole population, and to allay the jealousies naturally existing between the several classes, has unavoidably presented to the individuals, who first attained a majority in the Legislature, a temptation to perpetuate their own power by adopting a course directly opposite. To the same influence, may be traced the small encouragement which has been held out to the settlement of the vacant Lands of this Lower Province by British Population, and consequently, that upwards of eighty thousand souls (a number equal to one-fourth of the actual French Population) who since the last American War have emigrated to this Province from Great Britain and Ireland, scarcely one twentieth part remain within its limits.

Your Petitioners have observed with gratitude, the disposition which your Majesty's Government has evinced by the Act of the present year of your Majesty Cap. 119, to apply a remedy to the existing political evils of these Provinces, but it is their humble opinion that the Provisions thereof are insufficient; that numerous circumstances concur to render vain any attempt permanently to regulate to the satisfaction of both Provinces the division of the Revenue collected at the Port of Quebec, unless united under one Legislature; and further they humbly beg leave to express their fears, that some of the provisions of this Act although dictated by the necessity of regulating the conflicting claims of the two Provinces may afford a pretext for others for imputing to the Imperial Parliament a disposition remote from the intentions and views of your Majesty's Government.

Having thus stated the evils under which they have suffered, your Petitioners feel the fullest confidence in the Justice and wisdom of your Majesty's Government, and being satisfied that the subject will receive the most serious and deliberate consideration, would have felt much hesitation in presuming to suggest remedies; but, as the Reunion of the two Provinces has been proposed in the Imperial Parliament, they beg leave to express their entire acquiescence in the adoption of that measure, upon such principles as shall secure to all classes of your Majesty's Subjects in these Provinces, their just rights, and protect the whole in the enjoyment of existing Laws and their Religion as guaranteed—such a Union would in the opinion of your Petitioners afford the most effectual remedy for existing evils, as it would tend gradually to assimilate the whole Population in opinions, habits and feelings, and afford a reasonable hope that the wisdom of the United Legislature would devise a system of Government of more consistency and unity, and of greater liberality to all classes than has hitherto been experienced. A Union on the Equitable Principles humbly suggested by Your Majesty's Petitioners, will necessarily include a representation proportionate as

near as possible to the numbers, wealth, and resources of the different classes of Inhabitants of these Provinces, will require no innovation in the Laws or Religion of the Country, nor proscription in Debate or Motion in the Legislature, of the language of any portion of the Inhabitants, in every class of whom, bravery and loyalty have been evinced as fellow soldiers in defence of the Provinces.

May it therefore graciously please your Majesty, that a Bill for the Union of the two Provinces of Upper and Lower Canada, on the equitable terms prayed for, by your Petitioners, do pass into Law, and the Constitution established thereby be preserved inviolate to your Petitioners and their posterity.

And your Petitioners as in duty bound will ever pray.

Quebec, December, 1822.

PETITION FROM CONSTITUTIONAL SOCIETY, QUEBEC, AGAINST UNION.[1]

QUEBEC, 15th November 1822.

SIR,

The Inhabitants of this Country have heard, with the most profound concern, that, in the last Session of the Imperial Legislature, a Bill was introduced in the Honourable the Commons House of Parliament, purporting an union of the Legislatures of Upper and Lower Canada, upon terms extremely disadvantageous, and deeply humiliating to the interests and feelings of the latter Province.

The Canadians were however well assured that no measure affecting their rights would ever pass that Honorable House, until those for whom it was intended had an opportunity of being heard; and, accordingly when it was ascertained that the Bill had been postponed for that express purpose, (the Provincial Legislature not being in Session) measures were immediately taken in various parts of both Provinces to address an humble Petition to His Majesty and both Houses of Parliament against it.

At a very general, numerous and respectable Meeting of the Inhabitants of the District of Quebec, a Committee was chosen for the purpose of preparing and forwarding these Petitions, which are now in a state of forwardness; but, as it will necessarily require a considerable time to enable the Inhabitants of this very extensive and populous District to subscribe the same, especially at this season of the year; and as it is feared that before they can be forwarded and presented, the Bill may have been again revived, the Committee beg leave to enclose a copy of their Resolve of the 31st October last, and entreat that you will use your influence with the Members of the Honorable the House of Commons, to prevent the Bill from being passed before the Petitions from this Country shall have been presented.

The Committee assure you that His Majesty's Canadian Subjects, relying with the most perfect confidence on his paternal solicitude, and the wisdom and justice of Parliament, are fully assured that the Bill will not pass, when it is known in England that the Honorable movers of it were misinformed in a

[1] *Q. 161, pp. 295-296.*

manner to lead them to believe that the measure was beneficial to the Country, and would be highly acceptable to the Canadians,—an assertion as unfounded as it is injurious to the spirit and patriotism of the People, a vast majority of whom, in both Provinces, are decidedly and unalterably averse to the proposed union, under any condition whatever, and much more so under those of the Bill in question.

By Order and on behalf of the Constitutional Committee for the City & District of Quebec.

We have the honor to be, Sir
Your most obedient and
most humble servant.

L. DE SALABERRY—*Chairman.*

E. TETU
Wm HENDERSON } *Secretaries*

ROBT. WILMOT Esq.
M.P.
23 Montagu Sq. London

JEAN BÉLANGE

PETITION FROM KINGSTON, FOR UNION.[1]

To the King's Most Excellent Majesty.

The Petition of sundry inhabitants of the Town of Kingston and County of Frontenac in the Midland District and Province of Upper Canada.

Most humbly Sheweth.

That Your Majesty's Petitioners availing themselves of the opportunity graciously afforded them by the postponement of certain measures lately entertained in the Imperial Parliament, on the subject of uniting the Legislatures of the Canadian Provinces, beg leave with humility and deference, to present at the foot of the Throne, their reasons and Motives, for praying the immediate furtherance of that Union.

Not that Your Petitioners are insensible to the value of that excellent Constitution which this Province received in the Thirty first year of the Reign of our Late most Beloved Sovereign, by which under the wise and fostering administration of the present Lieutenant Government, [sic] they acknowledge with gratitude, that this favored portion of Your Majesty's Dominions Enjoys much happiness and prosperity.

But that nevertheless this Province of Upper Canada being from its Geographical situation dependent on the sister Province of Lower Canada, for a channel whereby to import or export the various articles of its Commerce; and no adequate provision having been made on the division of the Province, for

[1] *Q. 333, pp. 4-8.*

its free use of that Channel, numerous unhappy disputes have of late Years arisen, as, touching its due proportion of Revenue arising from Duties on Articles imported, to the manifest injury of its fair and equitable claims, as has been fully laid before Your Majesty's Ministers by a Commissioner appointed by the Provincial Parliament for that express purpose.[1]

That your Petitioners tho' they hail with all gratitude the measures which the parental and considerate wisdom of your Majesty's Government has already devised, in the Canada Trade Act, for the remedying of these Evils, yet humbly suggest their anxious fears that this Act does not go to their root.

They have too much reason to be assured that every impediment will still be thrown in the way of fair and equitable adjustment; and that as often as the right of objecting to Revenue Laws is exercised by Upper Canada; great and unpardonable offence will be given to the Legislature and people of Lower Canada, and that in Short, the misunderstanding now unfortunately existing on this Subject between the Provinces, will be kept up and thereby National prejudice and antipathy already violent, will become so inveterate, that the Union of the Legislatures, which your Petitioners conceive must be the ultimate remedy, will in time be difficult, if not altogether impracticable.

Your Petitioners further beg leave to suggest that, the Canada Trade Act will not effectually remove the causes of complaint which exist from the nature of the present state of things, viz. The want of a Cordial co-operation between the Provinces in improving the navigation of the S^{t}. Lawrence, an object of the first importance to Upper Canada, but which without the concurrence of Lower Canada, cannot be accomplished; together with the other numerous obstacles, to the better regulation of Trade and Commerce, which the mutual jealousy of the two Separately existing Legislatures rather tends to increase than to diminish.

That from the Sketch which Your Petitioners have received thro' the medium of the Public Prints, of the lately entertained Union Bill, they are fully confident that it is sufficient to obviate effectually the present existing causes of Jealousy and distrust, to harmonize the mutual feelings of the two people, and to produce to both Provinces an abundant increase of strength, wealth and happiness; securing to each all the essential privileges of their present constitutions; or if affecting as is the opinion of some persons among us, the Elective Franchise, and freedom of Parliamentary Proceedings; yet your Petitioners rest contented, that in these and all other Matters, consistent with sound policy, Your Majesty will lend an indulgent ear to whatever may be the general wish of your faithful Canadian Subjects.

And therefore Your Petitioners humbly request that your Majesty will be graciously pleased to recommend your Ministers to further the projected Union in the Imperial Parliament, in such way and under such terms as may be deemed most expedient to our Mutual Wants and necessities, and most conducive to the happiness and prosperity of both Provinces.

And Your Petitioners as in duty bound will ever pray.

Kingston, Upper Canada
12th November 1822.

[1]John Beverley Robinson, Attorney General of Upper Canada.

PETITION FORM WENTWORTH, AGAINST UNION.[1]

To the Honorable the Commons of the United Kingdom of Great Britain and Ireland in Imperial Parliament assembled.

The Petition of the Inhabitants of the County of Wentworth in the District of Gore and Province of Upper Canada.

Most respectfully Sheweth.

That, Your Petitioners, His Majesty's dutiful and loyal Subjects many of whom emigrated to this Province, at an early period of its existence as such (for the purpose of enjoying the blessings of British Government) immediately drew forth the Paternal care and solicitude of His late Majesty George the third, who in the thirty first year of His Reign by and with the advice of the British Parliament gave to Canada a Constitution, a transcript of their own, and at the same time for good and sufficient reasons divided Canada into two Provinces; the Upper Province being principally settled by subjects of His Majesty who were accustomed to British Laws, and using the English language.

Every Circumstance that has arisen during the period elapsed has tended to unfold its benefits by bringing its enactments into practical operation, raising our admiration of, and attachment to, a constitution so well adapted to our feelings, and contributing so largely to our happiness.

Conscious that our Gratitude and attachment to His Majesty's Government had been manifested on every proper occasion, it was with deepest regret and utmost astonishment that we received the heads of a Bill brought before Your Honorable House during its last Session for altering the said Act of 31st Geo. 3d Ch. 31. Altering the same so as to destroy our liberty altogether, without our consent, or even our knowledge and without any misconduct on our part amounting to a forfeiture.

We beg leave to assure Your Honorable House, that, the proposed alterations could only have originated in misrepresentations of the grossest nature & from utter ignorance of the localities of the Country and the Wants, Circumstances and feelings of the people.

It was thought proper in the present Constitution to leave the quantum of property possessed by Representatives to be assigned by the Provincial Legislature which has been done so as to secure the respectability of the Assembly without circumscribing too far the choice of the Electors; but raising the qualification of Members to £500 Sterling, agreeably to the Bill before Your Honorable House at its last Session, would have the effect of disfranchising the electors altogether, some Counties not being able to select such qualified persons out of their whole population: Landed property likewise being made answerable for demands against the Owners, in cases where Chattels would only be liable in England, causes real Estate in this Province frequently to change possessors; We would rather therefore, resign the Representative Branch altogether, than to have the House of Assembly established on such principles, and to be told of every Act with which we could not accord, that it was our own, when we might, and frequently would be under the necessity of choosing men for our Representatives, no other way qualified, than by holding large tracts

[1] *Q. 333, pp. 64-72.*

of wild land, which is in effect one of the greatest nuisances in the Province. The lengthening the duration of each Parliament to five years is to us particularly objectionable as extending too far the period before which the Representatives could again meet their constituents, and the vesting of the Executive Government of each Province with power to introduce Two Members into the Assembly without the exercise of the elective franchise, is we believe, without a precedent, and would give an undue influence to the Executive, which in our Opinion already possesses enough for all the proper purposes of Government; for in this Country Officers under the Government are not excluded from the Legislature as in England, by whom every wish of the Executive may be made Known and ably supported, as has been constantly the case.

The requisition likewise made upon the Legislature to make permanent provision for the administration of Justice and support of the Civil Government, would at once render that power, a nominal and unsubstantial one, and deprive the House of Assembly of the only proper and effectual check necessary to balance the otherwise overwhelming force of the Executive: For our own short history has taught us, that times of plenty are times of profusion, and by granting a permanent supply, the House of Assembly will part with the power to accommodate the expenditure to the amount their resources may enable them to grant, to curtail enormous contingencies, or to afford compensation to services that may imperatively call for reward—The propriety of this observation has become more evident by the experience of a few years, for, from 1812 to 1816 an unusual quantity of money was in circulation in this Province, and as might be expected, abundance in receipt produced extravigance [sic] in expenditure, both public and private.—The reverse has been great and sudden, for we have experienced and do still experience a period of depression beyond parallel, during which, all the usual means of the Country have scarcely been equal to the nett supply of an increased Expenditure.

We proceed humbly to state our objections to an Union of the Legislatures of the Canadas on any terms.

The population of this Province is chiefly composed of subjects, who have emigrated from Great Britain and Ireland, or from His Majesty's late American Colonies and their descendants, who from a Sameness of origin, Language, Customs, and Government, easily unite commix and become one people.

While His Majesty's Subjects, our Bretheren of Lower Canada, sprung from a distinct origin, speak a different language, profess a different form of religion, are wedded to their own peculiar manners and customs, and each Legislature haveing [sic] enacted, adopted and retained Laws suitable to their own usages, customs and local wants; And these two Provinces having been separated into different Governments for more than thirty years; Your Petitioners do not believe that two Bodies so heterogeneous and discordant in all their parts as the Legislatures of Upper and Lower Canda must necessarily be, can unite, cement and become one so as to render equal advantages to both, which each has a right to expect from it's own separate Legislature; and, if an ascendancy should be given to the Representation of Upper Canada over that of Lower Canada, to which we do not feel entitled from our population it would be offering injustice to our Brethren of the Lower Province, with whom, we have no desire to quarrel nor by any measure to break in upon their rights and peace; and

should the advantage be on the part of Lower Canada we must be at their mercy, and we have no right to expect that attention to our interests which our wants and circumstances require, the only ground of difference heretofore existing between us being on account of our Quota of the Revenue, which having been put in an amicable train of adjustment by the prompt and timely interference of the British Parliament and His Majesty's Government, at once does away with every Semblance of reasonable Argument, that might be offered by those anxious for a reunion:—and also the extent of Territory would be so great, that were it inhabited by the Same people throughout, it must necessarily present such varied local interests that, the wants of Some parts of so extensive a Colony will be more liable to suffer from neglect, from ignorance or from clashing interests, than a less extent of territory would be.

To Sum up all, Your Petitioners are of opinion that the different origin of the population of the two provinces, the difference of their languages, habits manners, customs and Religions, together with their varied interests, will necessarily produce efforts for ascendency, create jealousies, strifes animosities and contentions, which may break out in consequences of an alarming nature, and all, without answering any one desirable object, which we can foresee, or that may balance the least of the evils that appear to us so obvious.—Wherefore We his Majesty's faithful subjects most earnest [sic] beseech Your Honorable House to abstain from placing us in a situation so perilous, so contrary to our wishes, and as we fear, so destructive of our best interests, and that Your Honorable House would forbear passing the said or any other Bill, of a like nature into a Law for uniting the Legislatures of Upper and Lower Canada, at any future Session of the Imperial Parliament.

And Your Petitioners as in duty bound will ever pray.

Papineau to Wilmot, 16 December 1822.[1]

Sir,

You may have been informed, that the strongest and most declared opposition to the Union of the Legislatures of Lower and Upper Canada, lately proposed in the Imperial Parliament, has been manifested throughout this Province and Upper Canada.

This circumstance alone must attract the notice of every Member of the Honourable the House of Commons who was present at the Debates, that took place on the Bill alluded to, introduced in the last Session of Parliament, when it was asserted by the movers and Supporters of the Bill, that the proposed law would be received with satisfaction by all His Majesty's Subjects in the Canadas, which assertion must have been grounded on misrepresentation made by persons entertaining the hope that the measure would be carried, before the sense of the people in these Provinces could be made known to Parliament. They have been thwarted in their expectation, by the justice and wisdom of the Honourable the House of Commons.

The opportunity afforded to these colonies to express their sentiments on the subject, has been used in both Provinces, and Petitions to His Majesty, and the two Houses of Parliament, against the Union of the Legislatures, are now

[1] *Q. 163, pp. 136-140.*

receiving signatures. These Petitions will make known the feelings and dispositions of His Majesty's Canadian subjects.

The Committee appointed at a general meeting of the district of Montreal, have considered it expedient that the members of the Honourable the House of Commons should be apprised of the measures now adopting here: and beg to request that you will be pleased to consider this their communication, as having no other motive or tendency than to intreat your attention, and to solicit your justice as a member of that House, where the dearest interests of this country may become the subject matter of discussion.

The Committee does not deem it necessary to enter into a detail of facts, which would sufficiently characterize the motives of the friends of the projected Bill, but merely wishes to dispel the odious aspersions on the great body of the people in this Province, contained in several communications intended for England. Such as, assertions that the opposition manifested in this Province on the part of the population so stygmatised is the effect of prejudices alone, alluding to their supposed attachment to France and to French principles; calling them foreigners; (foreigners in their native land!) The Bill in question, say these friends of the Union, being so well calculated to Anglify the country, which is to be ultimately peopled by a British race.

The very style of these communications will it is hoped, produce quite a different effect from that intended. It will be easily perceived on which side prejudices lie. No doubt these aspersions on the character of those whom they invidiously denominate French Canadians, were intended to produce irritation; from which an advantage was expected to be derived; but they had no other effect than that of producing contempt for such attempts against the liberties of the country. You will have occasion to observe, that the representations of the majority of His Majesty's subjects in this Province, will be such as should be expected from men who are attached to British principles, and to a British Constitution.

The preposterous calumny against the Canadians of French origin, as to their supposed attachment to France, requires no other answer than what is derived from their uniform conduct during the wars, and the loyalty evinced by them on every occasion. They are not foreigners in this the land of their birth; they claim rights as British subjects, in common with every other subject of His Majesty in these Colonies. These are their birth rights. And yet it was expected by the projectors of the Union Bill to deprive them of these rights, which were so solemnly secured to them by the Act of the 31st of His late Majesty, after the elaborate discussions that then took place, and in conformity with the just and liberal views of the most enlightened politicians of those days.

By what they call Anglifying the country is meant the depriving the great majority of the people in this Province of all that is dear to men; their laws, usages, institutions and religion. An insignificant minority wish for a change, and are desirous of ruling against every principle of justice by destroying what they call the Canadian influence, that is to say, the influence of the majority; of men entitled in the same rights as themselves, of the great mass of the natives: this eagerness to domineer has produced their present exertions, to obtain by unjust means that which they should not and cannot reasonably expect if the

matter be correctly understood. For it might be asked what right should that minority expect to have which would be subsersive of the equal protection due to all His Majesty's subjects, as well in colonies, as everywhere else? Has Great Britain ever entertained any such policy towards its Colonies? Is it just or reasonable, or even sound policy, that she should on this occasion, wound the feelings of a loyal population for the purpose of satisfying the prejudices of a few?—Great Britain wants no other Anglifying in this Colony, than that which is to be found in the loyalty and affection of its Inhabitants, no other British race than that of natural born subjects, loyal and affectionate. Such are the inhabitants of both Provinces; and it is the humble expectation of the Canadians, that on this occasion so momentous to them, their interests will be advocated by every liberal mind, as it is their belief and confidence that they will continue to enjoy the benefits of that constitution to which they manifest so strong an attachment, and which they consider as the safeguard of their rights and liberties.

I have the honour to be,
Sir,
Your most obedient and very
humble servant,

L. J. PAPINEAU *President*

Montreal, 16th December 1822.

By Order of the Committee

Js VIGER
Secretary

Addressed. R. J. Wilmot Esqr M.P.
23 Montagu Sqre
London.

Bathurst to Dalhousie [1]

Downing Street
13th Jan 1823

My Lord,

The projected measure of the Union of the Provinces of Upper and Lower Canada was submitted to His Majesty's Government to the House of Commons in the last Session of Parliament, in consequence of a distinct impression, (the origin of which it is not necessary for me here to explain) that it would have met with an almost unanimous concurrence in that House;—I have however now to communicate to you that His Majesty's Government have decided to relinquish for the present the reintroduction of that measure of the policy and propriety of which, in the abstract they still retain their original opinion,

[1] *G. 12, pp. 150-152.*

but which has been rendered inexpedient by the failure of that support, which they were justified in expecting, and by the train of circumstances which has resulted therefrom—It was the distinct anticipated [sic] of that support which alone induced His Majesty's Government to bring it forward at the time, and under the circumstances of its introduction, and to connect it with other measures which it was of paramount importance to pass without delay.

The course of the opposition which was offered to the measure was necessarily destructive of that effect of unanimity in Parliament, which could not have failed to reconcile even the prejudices of the Canadian Population to any measure passed under so unequivocal a sanction and which would at once have allayed any retrospective feeling of dissatisfaction, and have prevented the irritation which has been so strongly excited in those Dependencies of the Empire whose individual interests and advantages had been specifically consulted in the measure itself.

I have the Honor to be, My Lord,
Your Lordships most obedient
Servant

BATHURST

Lt General
The Earl of Dalhousie
G.C.B.
&c &c &c

[Endorsed] Downg. St.
13th January, 1823

Lord Bathurst
Union relinquished

(Clause Concerning Religion)

Wilmot to Dalhousie[1]

Downing Street
7th Oct[r]–1822

My Lord

You are aware that in the *first* part of the Bill submitted in the course of the last Session to the House of Commons there was a clause respecting the Kings Supremacy in the appointment of the Roman Catholic Clergy, which though in point of fact purely declaratory of the existing law, would, if acted upon, have introduced in its operation some degree of new practise–The enclosed suggestions or instructions were drawn up by M[r] C. J. Monck for the consideration of Lord Bathurst subsequently to the withdrawing of the Government part of the Canada Bill–They are intended to embody the spirit of that Clause, & the Question is whether, in the event of that part of last years

[1]*G. 12, pp. 106-119.*

Bill not passing in the form of a seperate Bill in the next Session, these instructions so embodying that declaratory Clause might not be acted upon with advantage to his Majestys Gov^{t} in Canada–& I am desired by Lord Bathurst to invite your opinion upon that point–as well as to their application in the event of such a Clause becoming law in the next Session–Lord Bathurst feels that after so long a non-usage, the question is a very delicate one, & requires to be very nicely worded if embodied in any instructions which are to be the subject of public comment–It may be a question whether the fitness of the person recommended to discharge the duties of the situation ought not to be omitted–& whether the approbation should not be studiously limited to his Civil & not in any degree to his Spiritual Character–Whether the power of removal by the Governor should not at least be protracted until after a reference home & a decision of his Majesty in Council thereupon, or whether it had not better be omitted in the first Instructions, & an occasion taken for introducing it in the event of actual inconvenience, for otherwise the Roman Catholic would be placed in a worse situation than the Protestant Minister–It would be right that "the Bishop" should be so designated in the approbation I have only to repeat that on all these points I have to request Your Lordships opinion & that I have the honor to remain

Your most obed^{t}
humble Serv^{t}

R WILMOT

The King's Supremacy upon the Collation and appointment of Roman Catholic Priests to Parish Curacies.

3 Geo. 4 Chap.

The Section[1] of the late Act passed in the third year of Our reign, has confirmed to our Roman Catholic Subjects the free exercise of their Religion as provided for by an Act passed in the fourteenth year of the reign of His late Majesty, Chapter 83, and you will pay particular attention, that it is Our pleasure, that no collation or appointment should hereafter be made of any Roman Catholic Curate to the exercise of the clerical functions within Our Province of Lower Canada but under the exercise of Our Supremacy as in that respect is provided for by Law. Should not similar Instructions be given to the Lieut Gov^{r} of Upper Canada To the end that we may be certified and well assured of the peaceable and quiet demeanor of such Curate as well as of his character and fitness duly to perform the clerical functions of his Office, and preserve the Loyalty, Morality and Tranquillity of the Parishioners over whom his Pastoral duties may be directed, it will be your duty to make all suitable enquiry touching the Character of any Roman Catholic Priest who may be recommended to you for Our approbation, of his being Collated, & appointed to the Curacy of any Parish as aforesaid, previous to granting your sanction to any such appointment.

Duty of the Gov^{r} to enquire into & be certified of the character of curates &c. to be appointed.

[1]*Sec. 26,* See *above* p. *130.*

And withhold appointing when not duly certified.

And in any Case, where the same cannot be certified, and we may be ascertained thereof as aforesaid, it will become your duty to withhold your sanction to the collation or appointment of any person to exercise and enjoy the rights, duties, privileges or emoluments of such clerical office.

No Curate to be appointed until after the Rom-Cath-Bishops recommendation.

And it is Our further pleasure that no Curate should be collated to such duties as aforesaid, until after you may have been certified in writing under the hand of the Roman Catholic Bishop or Superintendant of the Roman Catholic Clergy of the moral conduct, capacity, Loyalty, suitableness, of such Curate or Priest to be Collated and appointed to any particular parochial duties as aforesaid. And whensoever you may be satisfied in those respects every appointment to be made thereupon, shall be done under your hand and seal conformable to the draft of such appointment accompanying these our Instructions.

None such to be appointed but during pleasure.

And it is Our Will and pleasure that no Curate or Priest may be put in possession of any cure, or Collated to the exercise of any Clerical duties, rights, or benefits, arising therefrom but during Our Royal Will and Pleasure, to the end that he may be removed therefrom whensoever good cause should appear to us to require the same.

No removal of any Curate unless upon the Gov^{rs} authority. The present appoint^{mt} to remain.

And it is Our further Will and Pleasure that no amotion or removal of any Curate at present appointed to any Cure, or that may hereafter be collated thereto, should be removed therefrom, or the spiritual exercise of his parochial clerical functions, or the rights and benefits arising therefrom, but under, and with, your sanction and approbation to be expressed under your hand and Seal; And thereupon whenever any such removal may take place, you are required forthwith to certify to us your reasons therefor; it being our Will and pleasure that all Our faithful subjects, and those more especially selected to the exercise of clerical duties, should at all times rely upon, and receive our protection so long as they demean themselves deserving the same by the due discharge of their clerical functions promoting the loyalty, quiet, and comfort of Our Subjects, and the tranquillity of our Government. You will take due care that no Roman Catholic Curate shall be authorized to keep an Authentic Register, such as is required by Law, until after the Judge or person who may be legally required to authenticate the same, & thereby validity to the keeping such Parish Register, for enregistering therein all births, marriages, or burials of persons, that may arise within the said Parish, shall have been certified of your having sanctioned the appointment of such curate to the clerical duties aforesaid.

No Judges to authorise keeping a parish register, until he be certified of the Gov^{rs} having sanctioned the appointment. Sta^{t} 35. Geo. 3. chap. 4.

Form of Letters Mandatory of Collation and appointment of a Roman Catholic Curate to Parish Duties &c pertaining to his clerical functions.

By His Excellency - - - - Governor &c &c

To all our faithful subjects to whom these present Letters shall come - - - - - - Greeting.

[L.S.] This was the original title given to the R.C. Bishop. should it be altered?

Whereas the right Rev[d] O. P Superintendant of the Roman Catholic Clergy residing in Our Province of Lower Canada, hath by writing in due form represented to me the fidelity, capacity, & fitness of the Rev[d] A. B. Clerk, to be appointed to exercise & fulfil the Ecclesiastical functions of a Curate and have the administration of clerical duties to, among, and over the Parishioners in the Parish of C in the district of in the Province of Lower Canada; And reposing trust & confidence in the loyalty faithfulness & Zeal of the said A.B. and that his Ministry in the exercise of those clerical functions will contribute to the comfort and welfare of our faithful Roman Catholic Subjects & the peace and tranquillity of our Government. We do by these presents authorize the said Right Rev[d] O. P. to present in due form and announce [sic] the said A.B to the exercise of the functions aforesaid of Curate of the said Parish of C—and every part thereof. To hold the exercise of the said appointment during our pleasure and to receive all accustomed dues, Rights and privileges as a Curate of the Parish aforesaid.

And further, all his Majesty's Judges to whom it may pertain are hereby authorized to grant to the said A B such suitable approved Register as may enable the said Curate to keep and preserve an authentic record of Baptisms Marriages and burials of all persons within the parish aforesaid as is required by Law.

Given under my hand and Seal at Arms at - - this - - day of - in the year of Our Lord

DALHOUSIE TO A. W. COCHRAN.[1]

SOREL, 21st August 1822.

MY DEAR SIR,

Be so good as thank [sic] Mr. Stewart for me in returning to him his copy of the Bill; I have not detained it more than a few hours, and feel much obliged by his attention.

I think the Bill upon the whole a very clear one as to the extent and mode of the changes intended. I was indeed struck by the clause affecting the Clergy, which I saw some days ago in a London paper sent me by Mr Caldwell. I have no doubt it will annoy "Monseigneur" himself, but it stands upon too good a foundation of old Right in the Crown and old practice in the Province to admit of any question and as to the moment of doing it—it is just the time, when the unreasonable encroachments of the Assembly have driven the King's Ministers to a measure, by which they resume the full extent of the King's Prerogative in Government, and curb that attempt to trample upon it in a variety of shapes.

I think it wise too, to make all changes at once, rather than by repeated novelties, give cause to view H.M. Government working constant changes, and unsettled in their measures for our peace and tranquillity. Upon the whole I am content to carry it into effect, I see no one point to which, had I been consulted, I could have objected.[2] . . .

SEWELL TO DALHOUSIE.[3]

QUEBEC, 19th January 1823.

MY LORD,

I have attentively considered the enclosed Papers and shall frankly express my earnest hope that nothing respecting the Roman Catholic Religion will be inserted in the Bill which it is proposed to submit to Parliament.

The Instructions I think are warranted by the Statute 14 Geo. III, c. 83 which declares The King's Supremacy. But the present state of the public mind appears to me to require that they should be postponed, and it certainly would be prudent to do so.

The proper occasion for putting them in force would be upon the appointment of a new Roman Catholic Bishop. With a candidate for the Mitre, they might, then, be settled by a "Concordat," previous to any final approbation of his nomination, —and to all aspirants to the Episcopal Throne it might be intimated beforehand, that this course would be adopted upon the first vacancy.

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[1] *Dalhousie Papers, Vol. 5.*

[2] After much reflection and discussion, Lord Dalhousie changed his mind. While he maintained his conviction that the Royal Supremacy should be exerted, he felt that this could be done with a simple instruction to the Governor. Writing to the Hon. John Hale on 22 Dec. 1822, he said: "In regard to Religion—the provision of this Bill was unnecessary, because it is the King's Prerogative and only requires an instruction to the Governor, as His Majesty's Representative to exercise it, but no further than as the Government does so in regard to the Bishop and Protestant Church." *Dalhousie Papers, Vol. 5.*

[3] *Dalhousie Papers, Vol. 6.*

The Petition of the late Bishop Denaud to His Majesty, of which Sir Robert Milnes was the Bearer in 1804, and of which I spoke when I had last the honour of seeing Your Lordship, will form the best basis for any proceedings which may be had. This Petition must be in Lord Bathurst's Office, but a copy of it (if it cannot readily be procured) can be had I presume from Sir R. Milnes, or, from Mr. Ryland who was his Secretary.

* * * * * *

I have the honor to be My Lord,
Your Lordship's most obliged
and obedient Servant

J. SEWELL

His Excellency
The Governor in Chief.

CIRCULAR TO GOVERNORS.

Bathurst to Maitland.[1]

Downing Street London
2d April 1822.

Sir,

Considerable inconvenience having resulted to His Majesty's Service in several Colonies and Foreign Settlements of the Crown, from an erroneous impression entertained by Officers administering the Government of these Possessions; that my official correspondence with them, was liable to be removed by them during their temporary absence, or upon their retirement from the Government, I have received The King's Commands to signify to you His Pleasure, that with a view to guard against the inconvenience which I have mentioned, you take the necessary measures for preserving most carefully and methodically, in your official residence, the records of your own official correspondence with me, as well as all public dispatches and documents whatever, which have been already transmitted to you, or which may hereafter be sent to you; and You will consider that all such papers and documents are to be delivered over by you to the Officer who may be appointed to administer the Government, during your absence or upon your retirement.

I have the honor to be
Your most obedient
humble servant.

BATHURST

To Major General
Sir P. Maitland K C B
& & &

[1] *G. 60, pp. 37-38.*

APPOINTMENT OF CONSULS

Wilmot to J. Planta.[1]

Downing Street
5th Novr. 1822.

J. Planta Esq

Sir,

I have laid before Earl Bathurst according to the request of Mr Secretary Canning, conveyed to me in your letter of the 18t ultº the Copy of a Note from the Envoy Extraordinary of the United States which you therein enclosed, and in which Mr Rush represents by the direction of the President not only the expediency but the necessity of the Residence of American Consuls at all the Free Ports specified in the Schedules of the Acts of the last Session of Parliament, and claims the recognition of those Officers by His Majesty's Government on the ground of reciprocity.

I am directed by Earl Bathurst to state to you, for the information of Mr Canning, that although he should feel it as a paramount exercise of public duty, to enforce in every practicable manner the measures of Commercial Intercourse between the two Nations, as provided for, both, by the letter and spirit of the Acts alluded to; yet that his Lordship cannot consider the question of the reception and recognition of American Consuls in the Ports of the British Colonies as one of mere reciprocity.

The American Consuls are received in all the Ports of Great Britain and the United States possess no Colonies where a practical reciprocity could be exercised.

It is also to be observed that this is the first time when such a proposition has been made and if it be admitted at once in principle it cannot be refused to any other Nation preferring a similar demand and the proposition is evidently of a more extensive nature than the case requires, as there are nine free Ports established in the Island of Jamaica alone, at all of which it could not be necessary or expedient that an American Consul should reside.

But I am also directed by his Lordship to add, that with the view of promoting that Commercial Intercourse and those Amicable Relations so desirable between the two Countries; He will direct that the Governors of Lower Canada, Jamaica and of any one of the Leeward Islands the Name of which shall be suggested by the American Government, shall be instructed to receive and warrant the functions of three Consuls to be sent to these respective places on the part of the United States and that if this limitation be found after due experiment to be practically inconvenient and that these Consuls placed in situations at convenient distances are not sufficient to watch over and protect the general interests of the American Merchant; his Lordship upon the exposition of such practical inconvenience will endeavour to supply a remedy.

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[1] *C.O. 43, Vol. 62, pp. 180-183.*

At all events, if the demands of Commerce should make it necessary that more Consuls should be Appointed, the American Government might be permitted to select British Subjects at the other Free Ports enumerated in the Act, to discharge the duties of a Consul and in that case it would only be necessary that such selection should be submitted to the respective Governors of the Islands containing such Free Ports for their approval and ratification.

I am &c

R. WILMOT

COURT OF CHANCERY.[1]

Sol[r]. Gen[ls] Office
7 Jan[y] 1823

Sir,

In obedience to the Commands of His Excellency the Lieut.[t] Governor I beg leave to report for the Information of the Honble Executive Council that I have considered the Petition of Daniel Hopkins, herewith returned, praying that a Writ of Error may issue to remove the Record of a Cause pending in the Home District Court into the Court of King's Bench, in which he is Defendant, and am of opinion that the Prayer of the said Petition should be granted and that the Secretary of the Province should issue the Writ.

The Writ prayed for is an original Writ issuing out of Chancery and is demandable ex dibito Justitia and of right; but in as much as the Head of the Government in this Colony has in the Capacity of Chancellor but rarely authorised the use of the Great Seal, and then only upon a Fiat from the Attorney or Solicitor General, I would recommend for the present the same Mode to be adopted, and until it shall be publicly announced that His Majesty's Representative in this Province will sit as Chancellor and determine such Business as may be brought before him

I have the Honor to be
Sir
Your most ob[t] Serv[t]

H. J. BOULTON

[1] *Upper Canada Sundries, January-February, 1823.*

ALIENS.

Case of Marshall Spring Bidwell[1]

To the Honorable the House of Assembly of the Province of Upper Canada in Provincial Parliament Assembled.

The Petition of the undersigned, Freeholders of the Incorporated Counties of Lennox and Addington,

Humbly Showeth:—

That by virtue of a Writ of Elections, [sic] issued in the usual form and directed to John McLean, Esquire, as Returning Officer, the Freeholders of these Counties were required to elect a person to serve in the present House of Assembly as a representative of the said Counties, and the election was appointed to be held at Adolphustown, on Monday the Eleventh day of February, in the year of Our Lord, One thousand eight hundred and twenty-two; when and where the Returning Officer, having read the said Writ of Election, called upon the electors to nominate their candidates.

Whereupon Marshall Spring Bidwell, Esquire, was nominated by one of the electors, and his nomination was seconded by another of the electors and taken down by the Poll Clerk by direction of the said Returning Officer, who declared to the electors that the said Marshall S. Bidwell was nominated as a candidate, and requested them to nominate any other candidates if they pleased.

Matthew Clark, Esquire, and Thomas Williams, Esquire, were then respectively nominated. The said Thomas Williams objected to the said Marshall S. Bidwell being a candidate, upon the ground of his having been born in the United States, and therefore being ineligible, as well as incapable of holding the necessary freehold property. In reply it was stated to the Returning Officer that although the said Marshall S. Bidwell was born in the United States, yet he was in truth and in fact within the provisions of the Naturalisation [sic] Acts of the British Parliament, by which, in the language of Sir William Blackstone, "All children born out of the King's legiance [sic] whose fathers or grandfathers by the father's side were natural born subjects are now deemed to be natural born subjects themselves to all intents and purposes, unless their said ancestors were attainted or banished beyond the sea for High Treason, or were at the birth of such children, in the service of a Prince at enmity with Great Britain." That at the birth of the said Marshall S. Bidwell his father, who was born a British subject, was not, nor had he ever been, in the service of a Prince at enmity with Great Britain; nor had he taken any oath of foreign allegiance containing words of adjuration of British allegiance; and the said Marshall S. Bidwell was therefore a natural born subject himself, within the express terms of these Acts of Naturalization, that such had been the construction put upon the law in this Province in regard to the eligibility of persons born in the United States of America of British born parents, and that it was a fact well known that there were in the

[1]*Journals of Assembly, Upper Canada, 1823, pp. 23-26; 161-166.* [Typed copy in Public Archives.] Bidwell was re-elected in 1824 and retained his seat in spite of a decision by the Law Officers of the Crown that he was ineligible. See below, p. 234.

present House of Assembly, as there have been in former Houses, Members who were thus born in the United States, That if freeholders were on that ground ineligible after seven years' residence here, they were also incapable of voting at elections; the qualifications of Members and Electors in this respect being defined by the same Statute, and in the same words; yet no one had ever questioned the votes of such freeholders, and even the said Thomas Williams himself declared that he was willing that their votes should be received at this election, and they were in fact, so received. It was further stated to the said Returning Officer that the said Marshall S. Bidwell, came into this Province to reside in the year 1812 before the late war with the United States, and had resided here ever since, a term of more than seven years; that after a regular clerkship according to the rules of the Law Society, he had been called and admitted to the profession and practice of Law in this Province as a Barrister and Attorney, and had taken the oaths of Office, of Allegiance, supremacy and adjuration, [sic] and the declaration of belief in the Christian Religion before His Majesty's Court of King's Bench: that he was seized and possessed in his right of the requisite estate in fee simple, and was legally qualified as a candidate for the election wherefore in his behalf, and in behalf of the electors who nominated him and those who intended and were ready to vote for him, the said Returning Officer was desired not to assume upon himself to reject the votes aforesaid for the said Marshall S. Bidwell. Yet he, the said Returning Officer, expressed his determination to reject them, declaring his only reason for so doing was that in his opinion the said Marshall S. Bidwell, having been born in the United States, was an Alien.

The oath of office was then administered to the said John McLean as Returning Officer, he not having taken the same until after he had formed and declared his determination to reject all votes for the said Marshall S. Bidwell. It was stated to the said Returning Officer that the said Marshall S. Bidwell was willing to take the oath of qualification prescribed by the Provincial Statute to be taken by candidates if required; and several of the electors then present requested and demanded of the said Returning Officer that he should receive the votes which might be polled for the said Marshall S. Bidwell whose name had already been entered by the Poll Clerk as a candidate, but the said Returning Officer persisted in declaring that he would receive no votes for him, whereupon the said Marshall S. Bidwell and the electors by whom he was nominated and the other electors who intended to vote for him objected and protested against the proceedings and conduct aforesaid of the said Returning Officer, and against the election about to be proceeded in as arbitrary, illegal, and subversive of the constitutional rights of the electors. The poll, however, was open, and several of the electors then came forward and declared and offered their votes for the said Marshall S. Bidwell, but the said Returning Officer refused to suffer them to be entered upon the Poll Book. He was then requested to permit a person as Clerk to sit by the Poll and to take down the names of the electors who had thus offered and might offer their votes for the said Marshall S. Bidwell, which he, the said Returning Officer refused to permit; but received the votes for Messrs Clark and Williams, and at the close of the Poll declared the said Matthew Clark elected, and accordingly returned him as the Member elect.

Twelve of the Freeholders protested against the said election and return on the grounds above stated.

Upon these facts, which can be verified by satisfactory evidence, and will not, it is believed, be denied by the Sitting Member, the undersigned Freeholders of the said Counties of Lennox and Addington respectfully submit to your consideration that the proceedings and conduct aforesaid of the said Returning Officer were a transgression of his duty as a Returning Officer and usurpation of the proper authority of Your Honorable House to judge of the qualifications of the Members thereof, and to decide all contested or doubtful points either of law or facts relating thereto, and infringement upon the constitutional rights of the electors, and an example dangerous and in its tendency fatal to the freedom and security of elections; and though the said Matthew Clark himself did not object to the said Marshall S. Bidwell as a candidate nor require the votes offered for him to be rejected, yet, as they were rejected, although at the instance of another candidate, it does not and cannot appear that the said Matthew Clark was elected by the majority of the electors qualified and claiming the vote in the said election. On the contrary, it is believed that a great majority of them were in favour of the election of the said Marshall S. Bidwell, and would have voted for him if they had not been deprived of the privilege of voting for the candidate of their own choice, for which reason many of them went home without voting at all.

Wherefore Your Petitioners humbly pray Your Honorable House to adjudge and declare that the said Matthew Clark was not duly elected, ought not to have been returned, and is not entitled to a seat in the House as a representative of these Counties.

And as in duty bound will ever pray.

Signed by Robert Perry, Jr., and
one hundred and eight others.

Lennox and Addington, 1822.

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13 February, 1823

Agreeably to the order of the day, the House proceeded in the Trial of the Lennox and Addington Election.

Mr. Jones, of Grenville, seconded by Mr. Shaver, moves that it be resolved, that Marshall S. Bidwell, Esquire, the candidate proposed to the Returning Officer at the Election for a Member to serve in Parliament for the Incorporated Counties of Lennox and Addington, and by the said Returning Officer rejected, having been born in the United States of America since the independence of those States, is by Common Law an Alien, and as it does not appear to this House that the said Marshall S. Bidwell is accepted by any Statute, nor naturalized by any British Act of Parliament, he is therefore incapable of being elected to serve in the Parliament of this Province.

In amendment Dr. Baldwin, seconded by Mr. Van-Koughnet, moves that it be resolved, that Marshall Spring Bidwell, Esq., named in the Petition of Robt. Perry Jr., and others, Freeholders of the Incorporated Counties of Lennox

and Addington, was not qualified within the meaning of the 22nd Section of the Statute passed in the thirty-first year of His late Majesty's Reign, Chap. 31, to be elected a Member to serve in the House of Assembly of this Province, and that the Sitting Member do therefore retain his seat.

On which debates ensued.

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14 February, 1823.

Agreeably to the order of the day, the House again proceeded in the Trial of the Lennox and Addington Election.

Dr. Baldwin's amendment to Mr. Jones', of Grenville, motion of the 13th instant was then put as follows.

Resolved, That Marshall Spring Bidwell, Esq., named in the Petition of Robert Perry, Jr., and others, Freeholders of the Incorporated Counties of Lennox and Addington, was not qualified within the meaning of the 22nd Section of the Statute passed in the thirty-first year of His late Majesty, Chap. 31, to be elected a Member to serve in the House of Assembly of this Province, and that the Sitting Member do therefore retain his seat.

On which the House divided, and the yeas and nays being taken were as follows .....

The question was carried in the negative by a majority of twelve, and lost accordingly.

Mr. Jones' of Grenville, motion of the 13th inst was then put as follows.

Resolved, That Marshall S. Bidwell, Esq., the Candidate proposed to the Returning Officer at the election of a Member to serve in Parliament for the Incorporated Counties of Lennox and Addington, and by the said Returning Officer rejected, having been born in the United States of America since the independence of those States, is by Common Law an Alien, and as it does not appear to this House that the said Marshall S. Bidwell is excepted by any Statute, nor naturalized by any British Act of Parliament, he is therefore incapable of being elected to serve in the Parliament of this Province.

On which the House divided, and the yeas and nays being taken were as follows.....

The question was carried in the negative by a majority of twelve, and lost accordingly.

Mr. Nichol, seconded by Mr. Randal, moves that it be resolved that the allegations set forth in the Petition of Robert Perry Jr., and others, Freeholders of the Incorporated Counties of Lennox and Addington, touching the election of Matthew Clark, Esq., to represent the Incorporated Counties of Lennox and Addington in the House of Assembly of this Province, have been proved, and that the said Election is void.

On which the House divided, and the yeas and nays being taken were as follows: . . . . . .

The question was decided in the affirmative by a majority of twelve, and it was resolved accordingly.

Mr. Nichol, seconded by Mr. Randal, moves that it be resolved that the conduct of the Returning Officer in refusing to allow Marshall S. Bidwell, Esq., to be polled at the said election, was an illegal assumption of power in violation of his duty, and a high breach of the Privileges of this House, as well as an infringement of the rights of the whole body of Electors of this Province.

On which the House divided, and the yeas and nays being taken were as follows: . . . . . .

The question was carried in the affirmative by a majority of twenty-five, [and] it was resolved accordingly.

Mr. Nichol, seconded by Mr. Randal, moves that it be resolved that it is the opinion of this House that in so doing the Returning Officer did not act corruptly or maliciously, but from misconception of his duty, and that this House does not see any necessity for censuring the said Returning Officer for his conduct at the said election.

. . . . . .

Mr. Nichol, seconded by Mr. Randal, moves that it be resolved that the said Marshall S. Bidwell in so far as allegiance is concerned was and is eligible to a seat in this House.

On which the House divided, and the yeas and nays being taken were as follows: . . . . . .

The question was carried in the affirmative by a majority of twelve, and it was resolved aecordingly.

Mr. Nichol, seconded by Mr. Randal, moves that the Speaker do direct the proper officer to sue out a writ for the return of a Member to represent the Incorporated Counties of Lennox and Addington in the House of Assembly of this Province.

Which was ordered.

Resolutions of Assembly, Upper Canada, 3 Feb., 1823.[1]

Resolved:—That it is the opinion of this Committee that the Chairman be directed to move that it be resolved that by the Laws now in force in this Province all Foreign Protestants are admissible to become Settlers therein and conforming to the provisions contained in the said Laws, and that on having done so may hold lands and enjoy all privileges and immunities of natural born subjects.

Secondly, That from ignorance of the Law and unavoidable difficulties, many Inhabitants of the Province otherwise qualified have neglected or been unable to qualify themselves according to the Law, by which means they cannot legally exercise and enjoy the rights of Subjects within the same.

Thirdly, That some Legislative Provision is absolutely necessary for quieting the minds of all such persons, and securing to them the enjoyment of their rights and properties as His Majesty's Subjects.

Fourthly, That this Provision can only be made by the Imperial Parliament.

Fifthly, And that an Humble Address be presented to His Excellency the Lieutenant Governor, praying him to transmit the foregoing Resolutions to His Majesty's Government, with the humble request that His Excellency will make

[1]*Journals of Assembly, Upper Canada, 1823, pp. 128-129.*

such representation of the subject as may induce His Majesty's Ministers to submit the same to the early consideration of Parliament.

Mr. Nichol, seconded by Mr. Jones of Grenville, moves that the Resolutions of this House on the subject of Foreign Protestants coming into this Province, be communicated to the Honorable the Legislative Council, and the concurrence of that House requested.

On which the House divided, and the Yeas and Nays being taken were as follows: . . . . . .

The question was carried in the affirmative by a majority of ten, and ordered accordingly.

APPOINTMENT OF SHERIFF.

ADDRESS OF ASSEMBLY, LOWER CANADA, 25 FEBRUARY, 1823.[1]

May it please Your Excellency,

We His Majesty's faithful and loyal Subjects the Assembly of the Province of *Lower-Canada,* pray Your Excellency that we may be permitted to represent to Your Excellency,

That of common Right and by the Law of the Land Our Sovereign Lord the King and the liege Subjects of His Majesty are entitled to the Advice of the Honourable the Chief Justice of this Province in all matters and Causes Criminal and Civil (the rights of recusation established by the Laws excepted) depending before the Courts of King's Bench for the trial of Causes Criminal and Civil, over which the said Chief Justice presides.

That every Act of His Majesty's Servants within the Province, whereby our Sovereign Lord the King and His Majesty's liege Subjects may be deprived of the Advice of the Honourable the Chief Justice of this Province in the aforesaid matters, is an abridgement of the undoubted Rights of His Majesty and of His faithful liege Subjects.

That it is one of the Duties of the Court of King's Bench for the District of *Quebec,* whereof the said Chief Justice of the Province is by Law the presiding Member, to correct and punish every breach of Duty on the part of the Sheriff of the said District, and to enforce against him all compulsory proceedings by Law established in the Causes pending in the Civil Courts, to fix and establish the Fees of Office to be taken and received, and to make Rules and Regulations for his government and guidance in the discharge of his important Duties.

That *William Smith Sewell,* Esquire, the present Sheriff of this District, latterly appointed to that Office, being the Son of the Chief Justice of this Province, the said Chief Justice is by that appointment liable to recusation and to become incompetent to hear, try or determine any matter or thing wherein the said *William Smith Sewell* may be liable or responsible towards either of the parties litigant or wherein their rights may come into contact with the interests of the Sheriff, and, in fine, wherein the said Sheriff may in any manner be interested or concerned relatively to his Fees.

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[1] *Journals of Assembly, Lower Canada, 1823. pp. 139-140.*

That in the Administration of Justice for the Trial and Punishment of Crimes and Criminal Offences, any relation between the Judge and the Sheriff, from whence it might be suspected or supposed that the Sheriff, in empannelling of Jurors, or in performing any other function of his Office, may be liable to act under the influence direct or indirect of the Court or of any Member thereof, or of the Executive Government, is destructive of that trust and confidence in the Law and its Ministers, which are the surest foundations of Society, Morality and good Order, and that in this respect the appointment to the Office of Sheriff of the District of *Quebec* of *William Smith Sewell,* Esquire, the Son of the Honorable *Jonathan Sewell,* Chief Justice of this Province, Member of the Court of King's Bench for the District of *Quebec,* and Member of His Majesty's Executive and Legislative Councils is a great public evil, destructive of Public confidence in the Administration of the Laws and Justice of the Country, and that this danger and these inconveniences are the more to be apprehended in Criminal cases, as in this Country the selection of Juries is subject to rules less strict than in other parts of the Empire.

The House of Assembly therefore pray Your Excellency would be pleased to take this matter into your consideration and in your wisdom to adopt such means for obviating these inconveniences and applying a remedy thereto, as Your Excellency shall deem meet.

Opinion of Executive Council.[1]

May it please Your Lordship,

The Committee having taken into their most serious consideration Your Excellency's Reference as conveyed in M[r]. Secretary's Cochran's Letter of Yesterday relative to the appointment of Mr. W. S. Sewell to the office of Sheriff and the address of the House of Assembly accompanying it, are humbly of opinion that there is no illegality in the appointment of M[r] Sewell to that Office, and it appears to them that no danger or inconvenience to the Rights and Interests of the People of this Province, either in Civil Matters or in the Administration of Justice is to be reasonably apprehended from the appointment of that Officer.

All which is respectfully submitted to Your Lordships Wisdom.

By Order

(signed) FRANCIS N. BURTON
Chairman.

Committee Room
5 March 1823.

[1]*Lower Canada, State Book J., p. 419.*

Opinion of Judges.[1]

To His Excellency George Earl of Dalhousie, G.C.B. Captain General and Governor in Chief in and over the Province of Lower Canada &c. &c. &c.

May it please Your Excellency

The undersigned Justices of the Court of Kings Bench for the District of Quebec have the honor to acknowledge the receipt of a letter from your Excellency's Secretary dated the 2d inst in which it is intimated to them, that Your Excellency is desirous of ascertaining the Opinions of the Judges upon the Appointment of Mr W. S. Sewell, and in which are referred to them the following questions, "Whether that appointment is in any respect illegal, or really dangerous to the rights of the Subject in the Administration of Justice," and having given these questions together with the address of the House of Assembly all that deep consideration which they merit,–and perceiving that the said Address, in order to shew that the nomination of Mr Sewell to the Office of Sheriff of the Court in which his Father presides, is illegal, proceeds upon the ground, that the Public is thereby deprived of the Judicial Opinions of Mr Chief Justice Sewell in all cases of controversy which may arise wherein his Son is a party, either in regard to the duties or emoluments of his Office; the undersigned feel sensible that in pronouncing any Opinion on the questions proposed by Your Excellency, they would put themselves in the exact situation in which the House of Assembly alledge that the Chief Justice has suffered himself to be placed by the Appointment of his Son to the office of Sheriff for the district of Quebec, for if as President of the same Court with the undersigned, he is thereby subject to recusation, so will they, by making their Opinions known on the matter propounded disqualify themselves from sitting and deciding in all matters which may judicially be brought in the same Court, in respect to the legality of Mr. Sewells Appointment, either by Writ of Scire facias in order to repeal the Letters Patent issued in behalf of that Gentleman or by such other course of Judicial Proceeding as the parties believing themselves agrieved may think proper to take, for the purpose of obtaining a decision of that question or of *any other*, relating to that Office.–

Under these Circumstances and considering the peculiar law of this Province by which the Judges are bound to decide both the Law and the Fact in Civil Cases, and are subject to recusation for giving extrajudicial Opinions the undersigned most humbly and most respectfully submit to Your Excellency that in praying to be excused from now giving any Opinion on the Matters so referred they best discharge their duty to your Excellency, the Representative of their Sovereign to the Public and to themselves

All which is nevertheless very humbly submitted,
by Your Excellency's Most obedient Servants.

J. KERR
OL: PERRAULT
EDWD BOWEN

Quebec, 30th April 1823

[1] *Lower Canada Sundries, S. 163, folio 17.*

Decision of Lord Dalhousie.[1]

Mem° 5th May. 1823.

The opinion given to me by the Executive Council and those of several Judges who have thought proper to answer the call of H.M. Representative for legal advice, have convinced me that the appointment of Mr W. S. Sewell to be the Sheriff of the district of Quebec is not illegal in any respect nor is it dangerous to the right of the subject, unless by a supposition of guilty & corrupt conduct in The Chief Justice of the Court, which is altogether inadmissible to my mind–

DALHOUSIE
Governor

BILLS OF INDEMNITY.

Resolutions of Assembly Lower Canada, 25 February, 1823.[2]

Mr. *Badeaux,* from the Committee of the whole House on the Report of the Special Committee to whom were referred the Public Statements and Accounts laid before this House by Order of His Excellency the Governor in Chief, reported according to Order the Resolutions of the Committee; And he read the Report in his place, and afterwards delivered it in at the Clerk's Table, where the Resolutions were again read as followeth:

1. *Resolved,* That it is the opinion of this Committee, That a Sum not exceeding eight hundred and ninety-eight Pounds sixteen Shillings and ten Pence Sterling, be granted to His Majesty to cover the like Sum expended by the Executive Government of this Province for the service of His Majesty's Civil Government therein, for the year ending the thirty-first October one thousand eight hundred and eighteen, beyond the sum granted by the Act to make good a certain Sum of Money therein mentioned advanced to defray the expenses of the Civil Government of this Province for the year one thousand eight hundred and eighteen.

2. *Resolved,* That it is the opinion of this Committee, That a Sum not exceeding Fifty-three thousand one hundred and thirty Pounds sixteen Shillings and seven Pence Sterling, be granted to indemnify His Majesty for the disbursements made and incurred by the Executive Government of this Province for the several Items of Expenditure of the Civil Government thereof, for the year ending the thirty-first of October one thousand eight hundred and nineteen, so far as the same may have been made in conformity with the Votes of this House for that year.

3. *Resolved,* That it is the opinion of this Committee, That a Sum not exceeding Forty-four thousand Five hundred and thirty-seven Pounds thirteen Shillings and seven Pence Sterling, be granted to indemnify His Majesty for the disbursements made and incurred by the Executive Government of this Province for the several Items of Expenditure of the Civil Government thereof, for the year ending the thirty-first of October one thousand eight hundred and

[1] *Lower Canada Sundries, S. 163, folio 18.*
[2] *Journals of Assembly, Lower Canada, 1823, pp. 141-142.* Four Bills were framed and passed in accordance with these Resolutions, but failed in the Council.

twenty, so far as the same may have been made in conformity with the Votes of this House in the year one thousand eight hundred and nineteen.

4. *Resolved,* That it is the opinion of this Committee, That a Sum not exceeding Fifty-four thousand and seventy-four Pounds eleven Shillings and nine Pence Sterling, be granted to indemnify His Majesty for the disbursements made and incurred by the Executive Government of this Province for the several Items of Expenditure of the Civil Government thereof, for the year ending the thirty-first October one thousand eight hundred and twenty-one, so far as the same may have been made in conformity with the Votes of this House for the said year.

5. *Resolved,* That it is the opinion of this Committee, That a sum not exceeding Forty-six thousand and fifty-eight Pounds nineteen Shillings and ten Pence Sterling, be granted to indemnify His Majesty for the disbursements made and incurred by the Executive Government of this Province, for the several Items of Expenditure of the Civil Government thereof for the year ending the thirty-first October One thousand eight hundred and twenty-two, so far as the same may have been made in conformity with the Votes of this House in the year one thousand eight hundred and twenty-one.

6. *Resolved,* That it is the opinion of this Committee, That the Indemnities which this Committee are of opinion should be granted shall not form nor be drawn into a Precedent for the future.

Report of Legislative Council, Lower Canada, 17 March, 1823.[1]

The Honorable Mr. Richardson, from the Special Committee to whom it was referred to frame and report to the House, with all convenient speed, the reasons which induced the Legislative Council to reject the four Bills sent up from the Assembly severally, intituled, " An Act to reimburse and indemnify His Majesty for certain sums of Money expended to defray the expenses of the Civil Government of the Province for the years one thousand eight hundred and nineteen, one thousand eight hundred and twenty, one thousand eight hundred and twenty-one, and one thousand eight hundred and twenty-two," by resolving to proceed no further thereon than the first reading of each, made the following Report, which he delivered in at the Table:

The same being then read by the Clerk, was in the words following:

The four Bills of Indemnity, sent up from the Assembly, contain new matter so illegal and unconstitutional in principle, and provisions of a description so serious; with Titles to all of the said Bills, and a preamble to one of them so alarming, that the Sovereign is thereby menaced, the supreme Legislative authority questioned, and an attack made on the appropriations authorised by the Imperial Act of fourteenth George III. Chapter eighty-eight,[2] as also upon the rights of the Crown respecting the disposal made of the casual and territorial Revenues thereof, with the fines and forfeitures thereto accruing, and

[1] *Journals of Legislative Council, Lower Canada, 1823, pp. 114-120.* This report was made in accordance with a resolution passed by the Legislative Council, 12 March 1823, which declared: "That it is indispensable that the reasons which induced the Legislative Council to reject the said Bills, [of indemnity] by resolving to proceed no further thereon than the first reading of each, should be entered upon the Journals of this House, to remain for a record to posterity." *Ibid, p. 105.*

[2] See *Shortt and Doughty, Constitutional Documents, p. 576.*

upon the appropriation permanently made by a Provincial Act of Parliament, of thirty-fifth George III Chapter ninth, of five thousand pounds, sterling, as if all antecedent appropriations, by whatsoever authority disposed of, were considered as null, and now open to the management, disposal and discretion of the Assembly, pretensions not warranted by the Law and practice of Parliament are also assumed. The Legislative Council therefore felt it their constitutional and imperious duty, as a Body interposed between the King and the people of this Province, to resist all such menaces, attacks, and pretensions; and, accordingly, determined not to proceed upon the aforesaid Bills, so highly objectionable in every point of view.

In so doing, they disclaim any intentions of assuming the exercise of any right respecting purely Money Bills, beyond what the practice of the Imperial Parliament authorises; and have acted, in the matter referred to, solely from the motives above explained; at the same time the Legislative Council wave no rights or privileges, to which they have a constitutional claim, nor do they admit any claimed by the Assembly, beyond that criterion.

The objections to those Bills embrace points which affect the Constitutional authority of the King, the legal supremacy of the Imperial Legislature, and what respects the rules, orders, and practice of the Lords and Commons of the United Kingdom in their Legislative proceedings, which have been adopted by this House.

The Legislative Council have, for their guidance, the Constitutional principles of the Monarchy, the general principles thereof affecting Lower-Canada, in common with the other Colonies of the British Empire, and the particular Acts of the Imperial Parliament which refer or apply generally by the provisions thereof, to all the British Colonies, or such of the said Acts as refer or apply to this Province in particular. The Titles of the Bills of Indemnity, and one of the Preambles, are highly objectionable, it being one of the first principles of the British Constitution, "that the King can do no wrong." Indemnity implies exemption from punishment, and to indemnify His Majesty, implies that he is liable to punishment: the expression, as to him, is therefore unwarrantable in the extreme, but which His Majesty's Ministers may require, if they act illegally. Those Imperial Acts of Parliament generally affecting all the Colonies which do not come within the controul of the Legislature of any of them, although levying and appropriating certain duties, for purposes thereinmentioned, are twenty-fifth Charles II. Cap. seventh, sixth George II. Cap. thirteenth, fourth George III. Cap. fifteenth, sixth George III. Cap. thirteenth,[3] and sixth George III. Cap. fifty-two, by some of which Acts are imposed what are usually denominated the Crown duties, which duties have been invariably remitted from Canada, and the other Colonies, to Great Britain.

In respect to those Acts, it is sufficient to state, that they passed before the Imperial Act of eighteenth George III. Cap. twelve,[4] and are not included in the Repeal contained in that last mentioned Act, nor are they repealed by any other, unless in so far as any of them may contain provisions of repeal or alteration respecting parts of such Acts; consequently they still remain in force;

[1]Really Cap. eleven. These are the various acts by which the Plantation trade was regulated.
[2]The Colonial Tax Repeal Act. See Kennedy, *Statutes, Treaties and Documents of the Canadian Constitution (Toronto: 1930), pp. 167-168.*

and moreover there is a striking circumstance respecting them, which is, that they formed no part of the alleged grievances of the former British Colonies, now United States of North America, which the said Act of eighteen George III. Cap. twelve, was expressly framed to meet and remove.[1]

The same remark applies to the Post Office Act,[2] which pervades all the Colonies, and the revenues whereof always were and are remitted to Great Britain, and it never was complained of by the above-said Colonies, now the United States.

The said Act of eighteenth George III. Cap. twelve, was wholly prospective, unless in so far as made retrospective by the Special provision therein contained for the repeal of so much of the Act of seventh George III. Cap. forty-eighth,[3] as imposed a duty on Teas imported from Great Britain into any Colonies in America, which positive provision for such repeal, proves that no other Colonial duties were intended to be repealed by that Act. That repeal had no reference whatever to the fourteenth George III, Cap. eighty-eighth, and as the continuance of the latter act in force, has been unremitted, and the duties thereby imposed constantly levied, the appropriation of the proceeds of those duties, according to the provisions of the said Act, remains unchanged and unchangeable, unless altered by another imperial Act; for nothing can be more absurd, than for an inferior and dependent power to assume a claim to the disposal of what a superior power, by a Legislative Act, has before disposed of; a former Provincial Parliament passed an Act, in one thousand seven hundred and niney-nine,[4] to commute or replace those duties for an equivalent, to take place when the Imperial Parliament should repeal the fourteenth George III. Cap. eighty-eighth, but that not having been repealed, it was not thereby affected, and accordingly the new contemplated commutation duties never could be levied. This is only mentioned as shewing a clear Provincial acknowledgment of its remaining in full force in all its provisions.

No general principles can be more clear, than that positive Acts of the Imperial Parliament, affecting the Colonies, cannot be repealed by implication, or by any Governor of a Colony, or by the Act of any Colonial Legislature, even if not disavowed by the Sovereign, for to repeal an Act of Parliament requires the like authority as that which made, unless the original, or some other Act of the Imperial Parliament, contains an express delegation to an inferior Legislature, of the power to repeal a particular Act or Acts of the Supreme Legislature, or parts thereof.

Neither can the King's prerogative, rights or revenues, be given up or abrogated, or the applications thereof be altered from their original purposes, by the Act of any Governor or Colonial Legislature, without the express consent of the Sovereign. The like reasoning as above in respect to the Acts imposing the duties commonly called the Crown duties, applies to the Imperial Act of the fourteenth George III. Cap. eighty-eighth, which was also passed before the eighteenth of the same Reign, Cap. twelve, and which Act of the fourteenth was expressly made to impose duties, and the monies thereby raised were appropriated and directed to be applied *for the defraying the expenses of*

[1]The Colonial distinction between direct and indirect taxation is here brought out.
[2]Originally passed in 1657. Re-enacted 1660, 12 Charles II, Cap. 35.
[3]Really 7 Geo. III, Cap. 46.
[4]39 Geo. III, Cap. 9.

the administration of Justice, and the support of the Civil Government of the Province of Quebec, and the Lords Commissioners of His Majesty's Treasury, or any three or more of them for the time being, are thereby empowered to cause such Monies to be applied towards defraying the said expenses. Nothing short of an Act of the British Parliament can alter that appropriation, and that it is so considered, by the said Parliament, is manifest from the Act of thirty-first George III. Cap. thirty-first, which in part repeals the Quebec Act of fourteenth Geo. III. Cap. eighty-three, leaving the other Act, or Chapter eighty-eighth, untouched; and further, were there any possible doubts about the total absence of right in the Provincial Parliament, to interfere in the disposal of the Monies levied under the fourteenth George III. Cap. eighty-eighth, they would be effectually removed by the Imperial Act, passed fifth August, one thousand eight hundred and twenty-two, Cap. one hundred and nineteenth, which contains a provision for the appointment of Arbitrators, to settle the conflicting claims of the Provinces of Lower and Upper Canada, respecting the division of the duties levied on Importations at Quebec, and makes the award final in what respects the division of such duties levied under Provincial Acts; whereas by the twenty-seventh Section of said Act of one thousand eight hundred and twenty-two, the said Arbitrators are directed to receive the claims in behalf of each Province, with respect to its proportion of duties, under the fourteenth George III. eighty-eighth, and to report the same, with the evidence thereon, to the Lords Commissioners of His Majesty's Treasury, " in order that they may make such order respecting the proportion in which the same shall be expended, within each of the Provinces respectively, *for the purposes mentioned in the said Act of fourteenth George III. Cap. eighty-eighth,* as to them shall seem meet."

Thus the purposes, and the powers of Appropriation towards those purposes, are so far from being annulled or altered, that they are expressly recognized as existing in the same shape as contained in the Original Act, and the Powers of the Lords Commissioners of His Majesty's Treasury, are most guardedly preserved without any Delegation thereof to the said Arbitrators. It is strangely inconsistent in the Assembly to claim the right or power of disposal of the Revenue, raised under fourteenth George III. Cap. eighty-eighth; because if the Appropriation contained in that Act be considered as annulled, so must the whole Act be, and in that case there would be nothing to dispose of in any shape, as levying of the duties thereby imposed would become illegal.

The said Act of fourteenth George III. Cap. eighty-eighth, thus continuing to exist in its original form and tenor in all respects, a question has been raised by the Assembly, whether the laying of Statements before the Provincial Legislature, of the produce of the duties levied under that Act, and of His Majesty's Casual and Territorial Revenue, and Fines and Forfeitures, can make any change in respect to prior Appropriations by Law, by reason of the House of Assembly having offered, in one thousand eight hundred and ten, to charge themselves with all the Civil Expenses of the Government, and the call made upon them in one thousand eight hundred and eighteen, by the then Governor, to redeem that pledge.

Surely the Assembly will not argue, that they intended a mental reservation, and only meant to offer a shadow, and that the Governor, in accepting it, meant to give up a substance, and thereby transfer the whole powers of the Provincial Government to the Assembly, and to place the Officers thereof at the mercy of that Body; yet such must be the conclusion, to support the pretensions of the Assembly to the rights of disposing of the proceeds of fourteenth George III. Cap. eighty-eighth, the Casual and Territorial Revenues, the Fines and Forfeitures, the five thousand pounds, sterling, appropriated by the Provincial Act, thirty-fifth George III. Cap. ninth, and other Provincial Appropriations for the Public uses of the Province, where the Reservation thereof for the future disposition of the Provincial Legislature is not expressly made; but true it is, that over none of these not so reserved, has the House of Assembly a shadow of legal right to the disposal.

The Appropriation of all those funds was made perpetual by competent authorities, and that cannot be now altered but by the Authorities which respectively disposed of them, and not by any branch of any Legislature, without the concurrence of the other branches thereof, especially of a Subordinate Legislature.

The moment the call was made on the Assembly, constitutionally to fulfil their offer in good faith, it became necessary to lay before them Statements of the whole Revenue applicable to the Civil List and other Public Expences, with Statements of the whole Expenditure; else how could it have been possible for them to ascertain what might be necessary to make up the deficiency of the Revenues, in respect to the Expenditure.

The Officers of Government upon the Civil List, and in its employment at the time, had assuredly a right to expect that they were not to be placed upon a worse footing than before, but might fairly look to be in a better situation, in so far as the Revenues then raised, were found inadequate to their original purpose, and might require increase; especially as the original offer boasted of the well grounded capacity of the Province to sustain its own burthens, and professed an acute feeling for having so long leant upon the resources of the Mother Country.

That if the permanent Revenues exceeded what might be necessary for those purposes, there was no need of levying more; and if less, the expectation of a provision for the deficiency, cannot be fairly construed or even tortured, into a transfer of the rights of Appropriation or disposal as they stood originally.

The case of the Governor's Message, respecting a remission of certain dues of *Quint* to Madame Cressé, proves nothing that is not amply rebutted by the foregoing reasoning: for how the remission, upon the strongest equitable ground, of a sum of Money due by an individual, can be construed into an abandonment of the right of disposal of the whole Public Revenue collected and appropriated under other and higher Authorities than those proceeding from the Provincial Legislature, is beyond comprehension.

The very doubting or questioning the right previously exercised by a superior or equally competent Authority, in respect to Appropriations or disposal of Monies, tends to infringe all ideas of security in Laws, however solemnly made, and must produce the most injurious consequences; for where is such a

principle to stop? the next Assembly may also question what the present does, and so on, until every thing be set afloat.

Upon the whole, the Legislative Council deny that the Provincial Legislature has the right, as contended for by the Assembly, of disposing of all the Revenue in this Province, whether before appropriated, or whether raised under the authority of the Imperial or Provincial Parliament, to aim at the assumption of such a right, by a subordinate body, under all the circumstances of the case, is so direct an attack upon the Supremacy of the Parent State, as if persisted in, must produce consequences to this Country which cannot be contemplated without the most serious apprehensions.

As to the other objections to the Indemnity Bills, the Legislative Council are governed by the precedents of the Imperial Parliament—they admit of none other; the safer course being to refer to those of the authority which constituted the Provincial Legislature upon its own model, rather than to borrow from authorities dissimilarly and inferiorly constituted.

The Civil List in Great Britain is, at the commencement of each Reign, granted for the life of the Sovereign; It is in one sum, without specification in the Act by Chapters or Items; although the Estimate sent to the House of Commons for their guidance in determining the Amount to be granted, may have contained Chapters: This is indispensable to the preservation of the Monarchy, else the Public Officers having annually to look to the Commons instead of the King, in the first instance the independence of the Crown, and the Balance of the Constitution would be destroyed, and the Commons become substantially the Government.

The principle is applicable here, and the like consequences would ensue from abandoning it. It is fallacious to suppose that the people would benefit by a contrary maxim. A popular body acquiring and exercising unconstitutional influence and power, would, in time, become more tyrannical than any single Despot.

The said Bills contain the striking impropriety of granting indemnity for the payment of about One hundred and forty thousand pounds, in four years. This amount having been paid towards the Administration of Justice, and support of the Civil Government, and towards local expences, and applied in virtue of anterior Appropriations by Law, has notwithstanding been brought into the said Bills, by an assumption of illegal power, as no indemnity can be requisite for acting in compliance with legal directions.

As to the Monies paid without previous Appropriations by Law, amounting to about One hundred thousand pounds in four years, towards the Civil Expenditure and Local objects, which are intentionally intermixed in the said Bills, it will excite surprise to find such difficulties made about covering them, when it is known, that the whole were applied in conformity to long established practice, in order to carry on the Provincial Government, and to prevent the serious injury which the Officers thereof must otherwise have suffered, during the impediment arising from the disputed pretensions of the Assembly. It is to be remarked, that only somewhat beyond one-half of the said One hundred thousand pounds was covered by the said Bills of Indemnity, and that the part included, and the part left out, were for Civil List and Local portions thereof, blended together.

It is notorious, that similar payments were made in one thousand eight hundred and eighteen, which the Assembly voted in one sum exceeding forty thousand pounds, (not in items) in that year, by their own authority, unconstitutionally passing bye the Legislative Council, a body of co-ordinate power and of rights equal to their own; and which sum was covered in the year following, by the Provincial Statute of fifty-ninth George III. Cap. twenty-fifth, the Preamble whereof declares, that the above sum had been advanced towards defraying the expense of His Majesty's Civil Government of this Province, for the year one thousand eight hundred and eighteen, *over and above the sums already appropriated by Law for that purpose*,—And the same Act contains, in the Body of it the following words: " shall be and the same is hereby directed to be charged against *the unappropriated Monies in the hands of the Receiver General of this Province, which have been raised, levied and collected under and by virtue of any Act or Acts of the Legislature of this Province.*"- Here is a Provincial Act originating with the Assembly, which establishes a precedent that they have ever since disregarded, by introducing items into the Civil List Bills, and this year attempting to dispose of Monies before appropriated by the Imperial Parliament, as also by themselves, as if every thing was to be prostrated which stood in the way of their assumption of unconstitutional and illegal power.

There being no prospective grant for the Civil List in the Indemnity Bills, they do not come within the principle which respects the duration for the King's life, otherwise than as consisting of Items, and intermixing and confounding what comprehends the expenses of the Administration of Justice and support of the Civil Government, with the Local expenses.- Those Bills, are also very objectionable, in not being confined to the arrears or deficiencies only, which are required to make up the difference between the amount of the Civil and Local Expenditures respectively, and the amount of the Sums paid on account out of the existing appropriations respectively, and should not have been framed to affect or include appropriations already made, as if such required any indemnity, or any additional authority.

In respect to Local Establishments, the Legislative Council admit that they may be temporarily provided for, by specifications of Items, Offices and purposes; but without the names of persons, unless in cases of Pensions, Premiums, Debts, Articles supplied, remunerations for services, or matters purely personal and not official; Because salaries are appropriated to the Offices by whomsoever held, and not granted to the Officer personally.- But as to the Civil List Expenses, or in other words, what respect *the Administration of Justice and support of the Civil Government of the Province*, they should in conformity to the practice of the Mother Country, be in one sum, and for the life of the King, in order to prevent that pernicious annual dependance upon the favoritism or prejudice of a popular Body, which would gradually undermine the correct discharge of duty by the Public Officer, and tend to discourage men of upright and independent mind and character, from accepting Offices, where the tenure and remuneration would be so precarious.

The Estimates sent down by the Governor in Chief, early in this Session for eighteen hundred and twenty-three, wherein there is a classification, distinguishing what affects *the Civil List or Administration of Justice and support of the Civil Government,* from what is considered *Local Establishments* made it easy for the Assembly to have acted in conformity thereto, instead of studiously confounding both together.

BILL OF SUPPLY, LOWER CANADA, 1823.

Resolutions of Legislative Council, Lower Canada, 18 March, 1823.[1]

That the Legislative Council see, with great concern and surprise, that the Bills sent from the Assembly, intituled, "An Act to enable His Majesty to "defray certain arrears of expenses appertaining to the Civil Government of the "Province," and "An Act to appropriate certain sums of Money towards "enabling His Majesty to defray certain expenses therein-mentioned, apper- "taining to His Majesty's Civil Government in this Province, for the year one "thousand eight hundred and twenty-three," do contain very objectionable matter in granting Monies from *the general funds of the Province,* no funds so denominated having legal existence, and the Titles, Preambles and Clauses of Grant and Appropriation in the said Acts, being worded so generally and ambiguously, as still to assume or mean to leave in doubt the right pretended to by the Assembly, of disposing of Monies raised and already appropriated and disposed of, either by Act or Acts of the Imperial Legislature, or by His Majesty, in respect to His Majesty's Prerogative rights and revenues, and fines and forfeitures, or by Act or Acts of the Provincial Legislature, containing permanent appropriations, or where the fines thereby imposed are not reserved for the future disposition thereof. Against all which assumptions and pretensions, whether directly or indirectly, or in any shape expressed made or implied, by open or covert language or meaning, the Legislative Council solemnly protest.

The question of concurrence being put on this motion,

It was resolved in the affirmative.

It was then moved to resolve,

That the Legislative Council have concurred in the said Bills as a measure of necessity resulting from the very advanced period of the Session, and the consequent impracticability, if they were rejected, of their being replaced before the Prorogation; and further, they have concurred therein to prevent the great general and individual distress, which the present rejection of the said Bills would have rendered unavoidable. But in so concurring, the Legislative Council declare, that they reserve all their rights and privileges unabated, and that they will not hereafter admit, upon any occasion whatsoever, of a proceeding so contrary to the rules and method of Parliament.

The question of concurrence being put on this motion,

It was resolved in the affirmative.

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[1] *Journals of Legislative Council, Lower Canada, 1823, pp. 126-127.*

CROWN REVENUE, LOWER CANADA.

Dalhousie to Bathurst.[1]

Quebec 23rd April 1823

My Lord,

I beg leave to lay before Your Lordship copy of a Report[2] made by a Committee of the Assembly in the last Session upon the Provincial Accounts, in which a question is raised as to the right of Government to apply the proceeds of the Revenue arising from the 14 Geo. 3d and other sources permanently appropriated to certain purposes declared in the several acts;

It is now believed that this question will be disputed until set to rest by an opinion of high legal authority in England and I am very anxious that Your Lordship would be pleased to procure me that advantage

I wish particularly to draw Your Lordship's attention to the latter part of that report at page *20* where all doubt on this subject appears to me fully and clearly answered, The Assembly however did not listen to such unconstitutional doctrine, and a wish has been very generally expressed to know the opinion of the Judges or of the law officers of the Crown in England, upon it.

Mr Davidson, who will have the honour of delivering this dispatch fought the argument in favour of His Majesty's Government here, in every Session of the Assembly, with equal ability, firmness and candour; it would be useless for me to add a word on a subject which he can so well explain; I will only say that I place utmost confidence in Mr Davidson and that he will be able to give your Lordship most correct information on any point relating to the circumstances or interests of this part of the British dominions.

I have the honour to be
My Lord
Your Lordship's
Most obedient
humble servant

DALHOUSIE

The Right Honourable
The Earl Bathurst
K.G.

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[1] *Q. 166, pp. 251-252.*

[2] The Report itself covers the same ground. In it the Assembly reiterate their claim to appropriate the Crown Revenue and refuse to acknowledge the distinction "between the Expenses of the Civil Government and those of local objects, foreign to the Civil Government." A Reply to this despatch was made on 23 November, 1824, and was communicated to the Assembly. See also *below, p. 233.*

IMPERIAL AND COLONIAL CUSTOM DUTIES.

Resolutions of Assembly, Lower Canada, 25 February, 1823.[1]

Resolved,

That an humble address be presented to His Excellency the Governor in Chief praying His Excellency may be pleased to adopt such measures as he may consider most expedient to procure the reimbursement of the Monies levied in this Province under the Act of the Imperial Parliament of the 51 Geo. 3 Cap 97. which have been by the Collector of His Majesty's Customs remitted to England contrary to Law which sums of money so raised are in virtue of the declaratory Statute of the 18th of His late Majesty Cap 12 & of the Act of the 31 Geo. 3. Cap. 31 at the disposal of the Colonial Legislature—

Stephen to Wilmot Horton.[2]

Lincoln's Inn,
27 February 1824.

Sir,

I have had the honor to receive your letter of the 19th inst, inclosing a despatch from the Earl of Dalhousie, dated at Quebec, the 19th of December 1823, and the copy of an address from the House of Assembly of Lower Canada, requesting the reimbursement to the Province, of the monies levied within it, under the Statute 51. Geo. 3d C. 97., and which appear to have been remitted to England; and I am to express to you, for Lord Bathursts information, my opinion, whether the duties in question are placed at the disposal of the Colonial Legislature, under the Statutes 18th Geo. 3d C. 12, and 31st Geo. 3d C. 31.

I have therefore to state, that I am of opinion, that the duties in question are at the disposal of the Colonial Legislature, solely and exclusively. I am however not aware what are the reasons which have induced the Collector of Customs to remit this money to England; and therefore I cannot venture to express a positive opinion that his conduct has been illegal. But no argument has occurred to myself upon which this procedure could be justified in point of law–

I have the honor to be
Sir
Your most obedient
humble Servant

JAS– STEPHEN Junr

Robt. Wilmot Horton Esqr
&c. &c. &c.

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[1] *Q. 169, p. 86.*
[2] *Q. 169, pp. 98-99.*

CUSTOMS TO TREASURY.[1]

May it please Your Lordships

Your Lordships having referred to us the annexed Letter from M^r Wilmot Horton to M^r Harrison transmitting the Copy of a letter from Lieut-General the Earl of Dalhousie enclosing an address from the House of Assembly of Lower Canada relative to the reimbursement to the Province of the monies levied within it under the Act of 51. of his late Majesty Cap. 97 & requesting to be informed under what authority one [sic] Collector at Quebec remitted the duties in question to England.

We report

That by the Act of 51^st Geo. 3^rd Cap 97, permission was granted to import into His Majesty's North American Colonies "Fruit, Wine Oil Salt & Cork" from any Port in Europe South of Cape Finisterre & by the 3^d Sec. those articles were to be charged with the same duties as goods of the like description were subject to upon being imported into any of the said Colonies from Great Britain & no other or higher duties–

That the only article so allowed to be imported which was liable to a duty when imported from Great Britain, was Wine, and which under the Act of 4 Geo. 3 Cap 15 was charged with a duty of 10^s/p^r Ton & which duty was charged on Wine imported into Quebec under the Authority of the Act in question & had it not been for the provision in that Statute that Wine imported under the authority thereof should be liable to the same duty as if imported from Great Britain & no other, the Wine would have been liable to a duty of £7. P Ton imposed by the 4 Geo. 3 Cap 15 on all Wines legally imported from places other than Great Britain.

We are therefore of opinion that the duties in question are not new duties imposed by the British Parliament for the regulation of Commerce & to be applied to the use of the Provinces under the authority of 31 Geo. 3 Cap. 3 Sec. 46 & 47, but are modifications of Old duties due to the Crown by virtue of 4 Geo. 3 Cap. 15 & have therefore been properly remitted by Our Collector at Quebec.

(Signed) R. B. DEAN
H. J. BOUVERIE
G. WILSON
W. T. ROE

To

The R^t Hon^ble
The Lords Commissioners
of His Majesty's Treasury.

[1] *Q. 169, pp. 84-85.* This decision was embodied in a despatch of 6 Nov. 1824.

STATUS OF INDIANS.[1]

No. 85

MAITLAND TO BATHURST.

Upper Canada. York,
14th February 1823.

MY LORD,

I have the honor to acquaint your Lordship that at the last Assizes held in the Western District of this Province an Indian was fully convicted of the Murder of another Indian in the Streets of Amherstburg, and sentenced to suffer death. The circumstances of the case, and the causes which led the Judge of Assize to suspend the execution of the sentence, and to make a special report of the
Nos. 1 & 2 case, are fully detailed in Mr Justice Campbells Report, and in the accompanying papers.

On receipt of this Report. I caused the other Judges to be referred to: the Report of Mr Justice Boulton will be found in the enclosure N° 3 and that of the Chief Justice, together with an Extract from his charge to the Grand Jury of the same District at a former
No. 6 Assize, in the enclosures Nos 4 and 5. A Petition from the Convict himself is also forwarded.

There being no precedent on record in this Province of a Case similar to the present, and the evident discrepancy in the sentiments of the Judges on the Policy of making individuals of the Indian Tribes amenable to our Laws for Offences committed amongst themselves, have induced me to order that the prisoner be respited until the decision of His Majesty's Government on the matter can be obtained. In order to which purpose, I have now the honor to submit the subject for your Lordship's consideration.[2]

I have the honor to be,
My Lord,
Your Lordship's
Most Obedient
Humble Servant,

P. MAITLAND.

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[1] *Q. 333-1, pp. 32-35.*

[2] Another instance of the inconvenience caused by the anomalous position of the Indians may be derived from the following clause of the statute of Upper Canada, 1823, for the preservation of salmon:—"And whereas the intention of the said Act is in a great measure defeated by persons employing Indians to catch salmon, after the expiration of the time limited by the said Act, be it further enacted by the authority aforesaid, that from and after the passing of this Act, it shall not be lawful for any person or persons to employ, buy from, or receive, under any pretence whatever, from any Indian or Indians, any salmon, taken or caught within any of the said districts, during the period in which persons are prohibited from taking or attempting to take or catch, any salmon or salmon fry within the said districts...." Offenders under this clause were made subject to the same penalties as offenders under the Act itself.

N°. 1.

Extract from Report of M^r. Justice Campbell Judge of Assize on the Western Circuit, dated York, 9^th September 1822.

"I have the honor to report my return last evening from the Western Circuit on which a variety of Crown Prosecutions have occurred, but none of sufficient importance to draw Your Excellency's attention except two cases of capital conviction.- One for Murder committed by an Indian named Shawanakiskie of the Ottawa Tribe, on an Indian Woman in the streets of Amherstburg. The case was most atrocious and fully proved- He was consequently sentenced to suffer death as prescribed by the Statute, but it having been urged by his Counsel that other Judges had on former occasions expressed an Opinion that the Indians of this Country are in no case amenable to our Laws, being exempted therefrom by Treaty, I have thought it expedient to respite execution of the sentence until Monday the 30^th instant, in order that Your Excellency may be enabled to ascertain upon what Authority such opinion is founded".

BATHURST TO MAITLAND.[1]

DOWNING STREET
11^th Aug^t 1823

SIR,

9 July 1823

Having referred to the consideration of M^r Secretary Peel your letter of the February last transmitting the case of an Indian Convicted of Murder I have now the Honor to transmit to you the Copy of a letter from M^r Hobhouse stating that M^r Peel wishes before he takes The King's Pleasure on this case to be informed whether there exists any Such Treaty as is alluded to in M^r Justice Campbell's letter of the 9^t Sept^r 1822; and I am to desire that you will furnish me with the information required by M^r Peel.

I have the Honor to be
Sir,
Your most obed Servant

Bathurst

Major General
Sir P. MAITLAND K.C.B.
&c &c

[1] *G. 60, p. 156.*

MAITLAND TO BATHURST.[1]

UPPER CANADA
YORK, 4th November 1825

No. 197
Miscellaneous

MY LORD,

With reference to Your Lordship's despatch of the 11th of August 1823, I have the honor to report that after the most diligent Search in the records of the Indian Department in this Country, there appears to exist no treaty that can give color to the idea that an Indian is not to be considered as amenable to the Law for offences committed against another Indian within His Majesty's dominions.

I have the honor to be,
My Lord,
Your Lordship's
Most Obedient
Humble Servant

P. MAITLAND.

The EARL OF BATHURST K.G.
&c.ra &c.ra &c.ra

WARRANT FOR EXECUTION OF INDIAN, 1826.[2]

George R.

Whereas Shawanakiskie, an Indian of the Ottawa Tribe, was at the Assizes holden for the Western Circuit in Our Province of Upper Canada, in or about the Month of August in the year One thousand Eight hundred and twenty two, tried and Convicted of the Murder of another Indian at Amherstburgh in Our said Province and had Sentence of Death passed upon him for the same; but Execution was Respited by Our Lieutenant Governor of Our said Province, until Our Pleasure should be known, on the ground of there being no precedent on Record in that Province of a similar Case, and of doubts whether the Indians were ameanable by Law to Our Courts, for Offences committed within Our Territory, against each other.- And Whereas We thought fit to refer the Proceedings in the said Case to Our Advocate, Attorney and Solicitor General for their Opinion, who have Reported unto Us that the Conviction of said Shawanakiskie was proper; and that no valid Objection exists against the Jurisdiction of the Court before which the said Shawanakiskie was tried. Now We considering the Heinousness

[1] *Q. 338, p. 465.*
[2] *G. 62, pp. 39-41.*

of the said Offence, Think it just that the said Sentence should be carried into full effect, and Our Will and Pleasure therefore is that Execution be done thereupon, unless in the case hereinafter next provided for But inasmuch as some circumstances unknown to Us may be Known to you Our Governor of Our Provinces of Upper and Lower Canada, or to you Our Lieutenant Governor of Our said Province of Upper Canada which may render it inexpedient to Execute the same, We are therefore graciously pleased to declare Our further Will and Pleasure, that if there shall appear to you or either of you to be good reason for not carrying the said Sentence into full effect, you do cause to be passed under the Great Seal of Our said Province of Upper Canada Our Most Gracious Pardon of the said Murder and Felony upon Condition that the said Shawanakiskie be Transported to New South Wales or Van Dieman's Land or some one or other of the Islands adjacent for and during the Term of his Natural Life, or be Imprisoned in some Prison in the said Province and there kept to hard Labour for the same Term, as to you or either of you shall seem most meet and agreeable to Justice.- And for so doing this shall be Your Warrant.

Given at Our Court at Carlton House, the 13th day of February 1826, in the Seventh Year of Our Reign.

To Our Right Trusty and Right Welbeloved Cousin Lieutenant General George, Earl of Dalhousie, Our Governor and Commander in Chief of Our Provinces of Upper and Lower Canada, Our Lieutenant Governor of Our Province of Upper Canada, and all others whom it may concern.

By His Majesty's Command–

ROB PEEL

Warrant vesting the Governor or Lieutenant Governor of Upper Canada with discretionary Power in the case of Shawanakiskie Convicted of Murder

CROWN AND CLERGY RESERVES

Resolutions of Assembly, Upper Canada, 8 March, 1823.[1]

Resolved, 1st, That immigration into this Province is of the highest importance, and deserves encouragement in every possible way.

Resolved, 2nd, That the circumstances of extending immigration into this Province having now become an object of contemplation with His Majesty's Government, it is the indispensable duty of this House to express its opinion on certain matters connected with this important subject as a source of information which this House presumes will be highly acceptable to His Majesty's Government.

Resolved 3rd, That immigration has been retarded and diverted from this Province by the great increase for fees for fronts of land.

[1] *Journals of Assembly, Upper Canada, 8 March, 1823, pp. 275-276.*

Resolved 4th, That the benefits of immigration are further greatly limited by the nature of the present system of location, whereby numbers of poor people are seated down on portions of land distant from each other, and remote from Mills and Roads, so necessary for the comfort of Settlers.

Resolved 5th, That the want of men of capital with its usual advantages of superior education, influence and example living amongst the new Settlers is a peculiar disadvantage to this Province.

Resolved 6th, That these inconveniences would be greatly if not entirely removed by the granting of Townships or other large tracts to persons of capital undertaking the settlement thereof on reasonable terms, of making roads, building mills, providing Smith's forges and tools, and other necessaries requisite to such settlements.

Resolved 7th, That the reservation of two sevenths of the lands, the one for the support of a Protestant Clergy, the other under the denomination of Crown Reserves, has a most injurious effect upon the settlement and prosperity of the Province by reason of the separation it occasions between poor settlers, the neglect of the roads, and the frequent non occupation of the best Mill Seats. The reservation for the Clergy being made by law this House does not suggest any change therein, but the other seventh, reserved by Order of His Majesty's Government would, if granted to settlers, greatly improve the country, and effect [sic] be more beneficial to the Government by the general prosperity it would give throughout the settlements.

Resolved 8th, That the Crown Reserves, by reasons of their divided and scattered positions offer no field for the expenditure of any useful capital. They remain now as at first, only fit for the occupation of the poor of [sic] laborious settler.

Resolved 9th, That the lands in Upper Canada from a safe foundation for the expenditure of capital, but as capital must necessarily be concentrated in order to be useful the division of the townships into two sevenths of Reservations a small proportion unfit for settlement and the rest in locations half perhaps occupied the other half unoccupied render it wholly impossible that any capital can be embarked in the purchase and improvement of large tracts.

Resolved 10th, That a tract of two hundred acres of land [is] a very moderate quantity for industrious man with a family, that less is scarcely worth his occupation, that fifty acres is so inadequate to the hopes of an industrious farmer that he could not with prudence accept it.

Resolved 11th, That an Humble Address be presented to His Excellency the Lieutenant Governor, accompanied by these Resolutions, requesting him to graciously please to forward the same to His Majesty's Secretary of State for the Colonies, together with His Excellency's favorable recommendation thereof.

80423—12½

CREATION OF NEW DISTRICT

3 Geo. IV. CAP. XVII.[1]

An Act to erect certain Townships therein-mentioned into an Inferior District, to be called the Inferior District of Saint Francis, and to establish Courts of Judicature therein.

(22d. March, 1823.)

Preamble.

WHEREAS until a general alteration in the system of Judicature established in this Province can be effected, it is expedient to make temporary provision for the administration of Justice in certain of the Eastern Townships; and whereas from the great extent of the Districts of Montreal and Three-Rivers, and the increased population of late years in those parts of the said Districts, included in the Counties of Buckinghamshire and Richelieu, it hath become an object of serious inconvenience to the Inhabitants residing in the Townships included within the said Counties, to attend the Courts of Justice; Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower-Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great-Britain, intituled, "An Act to repeal certain "parts of an Act passed in the fourteenth year of His Majesty's "Reign, intituled, "*An Act for making more effectual provision for "the Government of the Province of Quebec, in North America;*" and to make further provision for the Government of the said "Province"; And it is hereby enacted by the authority of the same, that, from and after the passing of this Act, such parts and so much of the Townships of Stanstead, Barnston, Barford, Hatley, Compton, Orford, Ascot, Brompton, and of the seventeenth, eighteenth, nineteenth, twentieth, twenty-first and twenty-second ranges of Bolton, as are comprised within the limits of the District of Montreal, together with the remaining parts of the Townships of Barnston, Barford, Hatley, Compton, Orford, Ascot and Brompton, in the District of Three Rivers, and the Townships of Hereford, Drayton, Emberton, Auckland, Clifton, Eaton, Newport, Ditton, Chesham, Clinton, Marston, Hampden, Stratford, Lingwick, Bury, Dudswell, Westbury, Stoke, Melbourne, Durham, Kingsey, Shipton, Windsor, Watton, Weedon, Garth, Wolfstown, Tingwick, Chester and Ham, shall be formed into, constitute and compose, for the purposes herein after mentioned, an Inferior District, which Inferior District so composed, constituted and formed shall be called the Inferior District of Saint Francis.

Certain Townships comprised in the Districts of Montreal and Three Rivers, formed into an Inferior District, to be called the Inferior District of Saint Francis.

Establishment of a Provincial Court in the

II. And be it further enacted by the authority aforesaid, that there shall be appointed a Judge in and for the said Inferior District of Saint Francis, who shall hold a Provincial Court for the said

[1] *Statutes of Lower Canada, 1821-24, pp. 338-350.*

Inferior District of Saint Francis.

Inferior District of Saint Francis, as herein-after mentioned, which shall have cognizance of, and have power to hear, try and determine during the terms, and in the manner herein-after mentioned, in the first instance, exclusively of every Court, Judge or Tribunal whatsoever, every suit or action purely personal, wherein the amount claimed may not exceed twenty pounds, sterling, any law or statute heretofore in force in this Province to the contrary notwithstanding.

Appointment of a Clerk.

III. And it is further enacted by the authority aforesaid, that there shall be appointed a Clerk to the said Court for the said Inferior District, who shall be entitled to receive, for his services, such fees, as by Law appertain to his situation, and no others.

In causes above £10, sterling, an appeal to lie to the Superior Terms of the Courts of King's Bench of Montreal or Three-Rivers.

IV. And be it further enacted by the authority aforesaid, that in causes in which the sum in litigation shall exceed ten pounds, sterling, an appeal from the final judgment of the Court of the said Inferior District of Saint Francis shall lie to the Superior Term of the Courts of King's Bench of that District, either of Montreal or of Three-Rivers, in which the defendant shall be domiciliated, or shall have received service of the summons, upon the party appealing giving security before the judge of the said Inferior District, that he will effectually prosecute his appeal, and in case of failure so to do, such appeal shall be held, deemed and considered to be abandoned,

Appellant to give security, &c.

and the Appellant shall be foreclosed from his right of appeal, and the judgment of the Court of the said Inferior District shall operate as a final adjudication in the last resort.

Such Appeal when to be applied for.

V. Provided always, and be it further enacted by the authority aforesaid, that no such appeal shall lie nor be granted, unless the same be notified and applied for to the Judge of the said Inferior District of Saint Francis, within fifteen days after judgment shall

Proviso.

have been rendered. Provided also, that the said Term of fifteen days shall, in no wise, affect absentees or persons incapable of exercising their rights, who shall be receivable to appeal within the fifteen days, next after the day of return of the absentee, and after the day on which the persons incapable of exercising their rights shall have ceased to be incapable to exercise them.

Certified copies of the Records of the cause appealed from, to be transmitted to the Courts of King's Bench.

Clerk's Fees.

VI. And be it further enacted by the authority aforesaid, that when, and as often as any person or persons may appeal from any judgment of the Court of the said Inferior District of Saint Francis, a true and certified copy of the Record of the cause appealed, shall, at the instance or request of the party appealing, be immediately transmitted by the said Judge to the Court of King's Bench of Montreal or Three-Rivers, as the case shall be, the party appealing paying for the copy of such record, to the clerk of the Court of the said District, at the rate of six pence for every one hundred words, and no more.

Removal of causes in certain cases.

VII. Provided always, and be it further enacted by the authority aforesaid, that when any suit or action instituted in the said Inferior Court, shall relate to any fee of office, duty, or rent, revenue, or any sum or sums of money payable to His Majesty, titles to lands or tenements, annual rents, or such like matters or things where the rights in future may be bound, the defendant or defendants shall be at liberty, before entry of a plea or defense to the merits of such demand, to form an exception to the Jurisdiction of the said Inferior Court, and to require that the said suit or action may be removed and brought into hearing, trial and judgment in the Superior Term of the Court of King's Bench of that of the two Districts in which shall be situated the real property or right which shall be the subject of the action, and with respect to actions merely personal liable to evocation, to the Court of King's Bench of the District in which the Defendant shall be domiciliated or shall have received service of summons, and all and every such exception so made as above-said, shall be entered of record, and the process, suit and demand, and all things thereto relating, shall be removed into the Superior Term of the said Court which shall proceed to hear and determine in a summary manner, whether the exception is well founded; and if the said Court shall sustain the exception, it shall proceed to trial and judgment, but if the said Court shall dismiss the exception, the process and all things relating thereto shall be remitted to the said Inferior Court to be there heard, tried and finally determined. Provided also, that where legal objection shall be made to the Judge of the said Inferior Court, every such objection shall be entered of record, and the process, suit and demand, and all things thereto relating shall be removed into the next Term of the Court of King's Bench of the District in which the Defendant shall be domiciliated, or in which he shall have been summoned, which shall proceed to hear and determine in a summary way, whether the said objection is well founded; and if the said Court shall sustain the objection, it shall proceed to trial and judgment of the suit in a summary manner, but if the said Court shall dismiss the objection, the process and all things relating thereto, shall be remitted to the said Inferior Court, to be there heard, tried and finally determined.

Power of removal from the Inferior Court, to the Courts of King's Bench, &c. when an objection shall be taken to the Judge.

The Judge authorized to issue before judgment, writs of Capias returnable to the Courts of King's Bench &c.

VIII. And be it further enacted by the authority aforesaid, that the said Judge shall have power and authority, in all cases in which a Writ of attachment against the body, or against moveable effects can now by Law be issued before judgment, to issue Writs of *Capias* or attachments against the body or moveable effects, or monies, according to law, and the same to make returnable to His Majesty's Court of King's Bench for that of the two Districts of Montreal and Three-Rivers, in which such Writ shall have been executed.

Defendants against whom such writs may have issued, entitled to such relief as if the same had issued from any Court of King's Bench, on their giving security.

IX. Provided always, and be it further enacted by the authority aforesaid, that in cases where such Writ of *Capias* or attachment against the body or effects may issue as aforesaid, the defendant or defendants shall be entitled to such relief, on giving security or otherwise to the Sheriff of the District in which such Writ shall have been executed, as he or they would or might be entitled to by Law, if the same had issued from any of His Majesty's Court of King's Bench in this Province; and in case security be not given, the Defendant and Defendants may be committed to prison in that of the two Districts in which he shall have been attached, until the cause be duly heard and determined, or otherwise settled, or disposed of by the parties concerned.

To be committed to Gaol, if the name be not given.

Time limited for the issuing of execution after judgment.

X. And be it further enacted by the authority aforesaid, that in cases over Ten pounds, sterling, there shall be at least fifteen intermediate days between judgment and issuing of execution, and in cases of Ten pounds sterling and under, there shall be also at least eight intermediate days between judgment and execution.

Cases in which real property may be seized and sold, and an execution awarded out of the said District into any other.

XI. And be it further enacted by the authority aforesaid, that when a return of *Nulla bona* shall be made by the Sheriff to any Writ of Execution, issuing from the said Inferior Court, or when the proceeds of sale of the moveables of the Defendant pursuant to such Writ of Execution, may not be sufficient to satisfy the amount of judgment and costs, the plaintiff shall, if the balance or sum remaining due upon such judgment, exclusive of costs, exceed Ten pounds, sterling, be entitled to, and shall have a Writ of Execution against the real or immoveable property or estate of the Defendant, and such Writ may, on application to the Judge, accordingly issue from the said Inferior Court, directed to the Sheriff of that of the two Districts in which such real property shall be situated, or his Deputy. Provided always, that when the Defendant shall not have sufficient goods, chattels, lands or tenements in the said Inferior District to satisfy the judgment, another Writ of Execution may issue from the said Inferior Court, addressed to the Sheriff of any other District of this Province, in the same manner as a Writ of Execution might issue from any of His Majesty's Courts of King's Bench in this Province, into any other District, and be therein executed.

The Inferior Court of St. Francis to be held at Sherbrooke.

Terms for holding the same.

XII. And be it further enacted by the authority aforesaid, that the said Inferior Court shall be held at the Village of Sherbrooke, and that the terms thereof shall be as follows, that is to say: From the twentieth to the thirtieth day of January; From the twentieth to the thirtieth day of March; From the twentieth to the thirtieth day of June; From the twentieth to the thirtieth day of September, and From the twentieth to the thirtieth day of November, both days included, Sundays excepted.

Two General Sessions of the Peace to be held at Sherbrooke for the said Inferior District.

XIII. And be it further enacted by the authority aforesaid, that there shall be held at Sherbrooke aforesaid, for the said Inferior District of Saint Francis, twice in every year, a General Session of the Peace, by the Justices of the Peace, or any three of them, whereof one shall be of the quorum, who shall hear and determine all matters relating to the conservation of the Peace, and whatsoever is or may be by them cognizable, according to the Criminal Laws in force in this Province, and the Terms of the said Court of General Session of the Peace shall be as follows, that is to say: From the first to the seventh day of February, and from the first to the seventh day of October, both days included, Sundays excepted. Provided also, that no Term of General Session of the Peace shall be held, until a legal gaol be established at Sherbrooke aforesaid.

Terms for holding the same.

Proviso.

Power of the Judge of the said Inferior Court, in things relating to Tutors, Guardians, &c.

XIV. And be it further enacted by the authority aforesaid, that the Judge of the Inferior Court of Saint Francis shall have authority, either in or out of Court, or out of Term, to proceed to the interdiction of Insane persons, the election of Tutors or Guardians, Curators and other Counsels of relations or friends, closing of inventories, attestations of accounts, insinuations, affixing and taking off seals of safe custody, and other Acts of the same nature, which ought not to suffer any delay; And shall have the same power and authority as is given by Law to all or any of the Judges of the Courts of King's Bench of the Districts of Quebec or of Montreal, to appoint a notary, or some other fit person, upon application of parties, to receive the advice and counsels of relations or friends, and he shall proceed on such matters in the manner and form prescribed by Law.

Appointment of Tutors, &c. may be set aside in the Superior Terms of the Courts of King's Bench of Montreal or Three-Rivers.

XV. Provided always, and be it further enacted by the authority aforesaid, that in all cases of appointment of *Tuteurs* or *Tutrices*, *Curateurs* or *Curatrices*, either to the person or to the estate, or *ad hoc*, homologated by the said Judge of the said Inferior District of Saint Francis, an appeal shall lie to the Judges of the Court of King's Bench for the District of Montreal or Three-Rivers, as the case may be, in Superior Term, in favor of all persons to whom such right may by Law appertain, and in the manner and form prescribed by the eighteenth section of an Act of the Legislature of this Province, passed in the forty-first year of the Reign of His Majesty George the Third, chapter seven.

Reservation of the King's rights.

XVI. Provided always, and it is declared and enacted by the authority aforesaid, that nothing herein contained shall be construed in any manner to derogate from the rights of the Crown, to erect, constitute and appoint Courts of Civil or Criminal Jurisdiction within this Province, and to appoint from time to time, the Judges and officers thereof, as His Majesty, His Heirs or Successors shall think necessary or proper for the circumstances of this Province, nor to derogate from any other right or prerogative of the Crown whatsoever.

Duration of this Act.

XVII. And be it further enacted by the authority aforesaid, that this Act shall continue to be in force until the first day of May, which will be in the year of our Lord, one thousand eight hundred and twenty-six, and no longer.[1]

3 Geo. IV. CAP. IX.[2]

An Act to amend an Act passed in the thirty-fourth year of the Reign of His late Majesty, George the Third, intituled, "An Act for the "division of the Province of Lower-Canada, to amend the "Judicature thereof and to repeal certain Laws therein-men- "tioned, inasmuch as the same relates to the Courts of "Criminal Jurisdiction."

(22d. March, 1823.)

Preamble.

Whereas it is expedient to alter and amend for a limited time, certain parts of an Act passed in the thirty-fourth year of His late Majesty's Reign, intituled, "An Act for the division of the Province "of Lower Canada, for amending the Judicature thereof and for "repealing certain Laws therein-mentioned"; Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower-Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great-Britain, intituled, "An Act to repeal certain parts of an Act passed in the "fourteenth year of His Majesty's Reign, intituled, "*An Act for "making more effectual provision for the Government of the Prov- "ince of Quebec, in North America,*" and to make further provision for the Government of the said Province," and it is hereby enacted by the authority of the same, that from and after the passing of this Act, it shall be lawful to and for any two of the Puisne Justices of the Courts of King's Bench in either of the Districts of Quebec or Montreal, to hold in their respective Districts within the Terms by Law appointed, Courts of King's Bench, for the cognizance of crimes and criminal offences, in as full and ample manner to all intents and purposes, as if His Majesty's Chief Justice of the Province or the Chief Justice of the Court of King's Bench, at Montreal, were personally present, and presiding thereat, any law, Statute or usage to the contrary in any wise notwithstanding.

Courts of Criminal Jurisdiction may be held in the Districts of Quebec and Montreal, by two Puisne Justices, without the Chief Justice of the Province, or the Chief Justice of Montreal.

Terms of holding the Court at Montreal.

II. And whereas the Terms of His Majesty's Court of King's Bench for the cognizance of crimes and criminal offences in the District of Montreal, are found by experience, to be insufficient to enable the said Court to dispatch the business depending before it; Be it therefore further enacted by the authority aforesaid, that the said terms of His Majesty's Court of King's Bench for the cognizance

[1]Continued and amended from time to time by various Acts. Made permanent by 3 & 4 Vic. Cap. 3 and subsequently again amended from time to time.
[2]*Statutes of Lower Canada, 1821-24, pp. 286-288.*

of crimes and criminal offences in the said District, shall, hereafter respectively, be held at Montreal, during the last five days of the month of February, and during the last five days of the month of August, in addition to the Terms now by law established and appointed to be there held.

Continuance of this Act.

III. And be it further enacted by the authority aforesaid, that this Act shall be and remain in force until the first day of May, in the year one thousand eight hundred and twenty-five, and no longer.[1]

DEFALCATION OF RECEIVER GENERAL.

Wilmot Horton to Dalhousie.[2]

Downing Street
14th July 1823.

My Lord/

I am directed by Lord Bathurst to enclose to you, unofficially, a memorandum on the subject of your letter dated the 28th of April 1823 relative to the state of the Receiver General's chest; & as you cannot at present receive the official letter which will be founded upon this minute, I have to desire that you will act upon the spirit of it without loss of time,–exercising the utmost lenity towards Mr Caldwell that is compatible with the security of the public interest. Nothing can be more objectionable than the system of giving a salary disproportionate to the duties performed, & allowing a profit to be made out of the use of the balances. The result is precisely what might have been anticipated. I find that the real balance in the hands of the receiver General has varied as follows–

October 1812	£12000
1813	18000
1814	21000
1815	39000
1816	96000
1817	65000
1818	43000
1819	54000
1820	67000
1821	81000

I have the honor to remain
Your obedt humbl Ser

R. Wilmot Horton

The Earl of Dalhousie
&c &c

[1]Continued by 5 Geo. 4. C. 23 to 1 May 1827 when it expired.
[2]*G. 12, pp. 213-219.*

Memorandum on the subject of a Letter from the Earl of Dalhousie, dated Quebec 28th April 1823, relative to the State of the Receiver General's Chest in the Province of Lower Canada, which has been referred to the Commissioners of Audit by the Lords Commrs of the Treasury

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It would appear from the Papers transmitted by The Earl of Dalhousie, & upon which the Board of Audit are about to report to the Treasury, that in whatever way the Account is settled between the Imperial & Colonial Treasury of Canada, there will remain a large Balance due from Mr. Caldwell.

That Balance is now about £80,000–, & should it ultimately be decided that the sums claimed in liquidation of the debt to the Colonial Treasury should be paid out of the Military Chest into the hands of the Receiver General, the only consequence of it would be the balance due from the Recr Genl would for a time be increased to that amount leaving the actual deficiency the same.–

It is not stated, what part of the above balance of £80,000, was in the Colonial Chest when Lord Dalhousie made his Report, but it must be presumed that a very small proportion only was available from which it may be inferred that the Recr Genl had made use of it for private purposes, a circumstance which appears to be admitted by himself.

The Receiver Genl has a Salary of only £400 pr annum, with a great & heavy responsibility, he has collected & paid the whole of the Colonial Revenue, without receiving any per Centage for doing so, which is the case in Upper Canada & it is therefore probable that the large balances which he retained in his hands were considered by him as part of his remuneration for such Services.

Under the circumstances although there does not appear to have been any express understanding that these balances should not be forth coming whenever required for the Public Service, yet it would be extremely unfair all at once to call upon the Recr Genl to make good the whole amount, & he should have due & sufficient notice of the intentions of Government–at the same time it would be equally objectionable, (when it is found that these balances cannot be immediately made good) not to take all possible precaution that they be not ultimately lost to the Public.

It would therefore I conceive be desirable that measures should instantly be taken by the Governor (in the most lenient manner consistent with his duty) to obtain adequate & good security from Mr Caldwell for the Total amount of the gradual liquidation of these balances.

Arrangements should likewise be made for securing with the concurrence of the Legislature of Canada, to the Recr General a different mode of remuneration for his services in future which remuneration he should be entitled to receive whenever the Balance is reduced to a certain Sum, say £10,000.–That in the meantime the Governor should direct such issue to be made from the Military Chest in Aid of Colonial Services as may be absolutely necessary & which the current Revenue is not adequate to defray.

That an adjustment of the accounts between the Imperial & the Colonial Treasury should take place as soon as possible.

And that the Receiver General should be enjoined to keep in future distinct Accounts of the payments chargeable upon the Revenue of the Province & of those chargeable to Great Britain.

E.S.
14 July
1823

DEFALCATION OF RECEIVER GENERAL, 1823.

Minutes of Council, Lower Canada, 14 August, 1823.[1]

Special Committee appointed to examine into the state of the Receiver General's Chest &c.

His Excellency was pleased to order:

That it be referred to a Committee of Three Members (with power to send for Persons and Papers) to establish and report on the following Points:

Whether the Receiver General is, or is not in a Situation to answer the Demands of the Government by payment of the Warrants drawn and about to be drawn by His Excellency the Governor in Chief, amounting to the sum of £33000? and

What course, if any, the Receiver General can suggest as a means to enable him to discharge the Warrants of the Governor in Chief.

At the same time His Excellency was pleased to appoint the Honorable Sir Francis Burton K.C.G. Lieut. Govr. of the Province, and the Hon^{ble}. Mess^{rs}. Smith and Hale to be the said Committee who are to report with all possible speed.

Saturday 16th August 1823

At the Council Chamber in the Castle of S^{t}. Lewis

. . . . . .

Report of the Special Committee respecting the state of the Receiver General's Chest brought into Council.

His Excellency laid before the Board the Report made by the special Committee on the Reference in Council of the 14th Instant which was read and ordered to be entered as follows:

"The special Committee of the Executive Council to whom it was referred to enquire and report upon certain points relating to the means in the Receiver General's hands to meet the demands of Government beg leave to report, that having met at the Civil Secretary's Office on Thursday the 14th Instant, and having called the Receiver General before them, they put to him the Questions contained in the Minute of Reference, and in answer to the first Question "Whether the Receiver General is or is not in a situation to answer the Demands of the Government by payment of the Warrants drawn and about to be drawn by His Excellency the Governor in Chief amounting to the Sum of Thirty Three Thousand Pounds"?

"The Receiver General stated; That he is not in a situation to answer those Demands, that some of His Excellency's Warrants already issued have not been paid from the want of Funds, but he

[1] *Lower Canada, State Book J. pp. 445-450.*

added that from the 1st March last to the 13th August instant he had paid about £1500 more on account of public services than he had received of public Monies during that Period.

To the second question; " What course if any the Receiver General can suggest, as a means to enable him to discharge the Warrants of the Governor in Chief? "

The Receiver General answered, " that the only means to be looked to, was the Revenue to be collected between this date and the 10th of October which might be calculated up to that period at from Eighteen Thousand to Twenty Five Thousand Pounds." To a further question put by the special Committee as to the other resources which the Receiver General could suggest for meeting the above mentioned Demands:

The Receiver General in answer referred the Committee to the President of the Montreal Bank, Mr Gerrard, then present who delivered to the Committee the annexed Paper A. The Receiver General further stated, that he was to undertake for the payment to the Montreal Bank of the Interest accruing on the sum to be advanced as stated in that Paper.

The Sum therein mentioned being only Sixteen Thousand Pounds, Mr Gerrard in answer to a question from the Committee, stated that he could not undertake that the Montreal Bank should advance a further Sum to the full extent of the amount required by Government, or for a period beyond that specified in the written Memorandum, But that for a certain further amount to the extent of Six or Eight Thousand Pounds, he could and would undertake that means should be advanced if required after that period, on the faith of receiving reimbursement from the public Revenue accruing during the ensuing Quarter "

FRANCIS BURTON
Chairman

A

Memorandum for the information of His Excellency the Governor in Chief in Council.

Mr Caldwell, the Receiver General, having informed me that his affairs are so embarrassed that he cannot supply the Sums immediately required for the Public Service, amounting to about Sixteen Thousand Pounds, I have taken the liberty of proposing as a temporary relief to advance that Sum out of the Funds of the Bank of Montreal on condition of its being reimbursed with Interest out of the Provincial Revenue that will be forth coming between this and the beginning of the ensuing Month of November which from his representation will be fully adequate to that purpose. And as with a view to the said reimbursement it may become necessary to order the Public monies as they fall due, to be paid into the Bank for

which Security may be required, I have the honor to state that in addition to the Security of the Stock of the Bank, I will become personally responsible if required for the faithful application of such Monies. I did myself the Honor to suggest that another mode of meeting the pressing public Demands might be adopted by His Excellency the Governor in Chief's borrowing the Sums required from the Military Chest and repaying it out of the Duties above mentioned, and if in so doing the medium of the Bank should be used, I will give the same security for any public Funds that may be placed therein as offered in the preceding proposition.

(signed) S GERRARD

Quebec 14 August 1823.

After reading the foregoing Communication, it was Resolved, as the opinion of the Board:

Opinion of the Board.

That the operations of the Office of the Receiver General be from this day until the First day of December next submitted to the Inspection and control of two Persons to be for that purpose appointed by His Excellency the Governor in Chief.

That all Monies which shall be paid by the Custom House or other Departments and by Individuals on account of the Revenue shall be paid on the Receipt of the Receiver General as heretofore, but shall be by him forthwith paid into the hands of the Persons who shall be so appointed, and be by them retained subject to the orders of the Receiver General for the payment of all such Warrants as the Governor in Chief shall address to the Rec^{r}. Gen^{l}.

That in case His Excellency the Governor in Chief as Commander of the Forces shall see fit to issue any Monies for the Service of the Province from the Military Chest the amount should be placed in the hands of the Persons who shall be so appointed, and in like manner be subject to the orders of the Receiver General for the payment of all such Warrants as the Governor in Chief shall address to the Receiver General.

Order thereon.

His Excellency approving the arrangement proposed, was pleased to nominate M^{r} Coltman, as a Member of the Executive Council, and M^{r} Oldham, as a Member of the Legislature, both residing at Quebec to be Members of this Commission with a view to relieve the Difficulties now pressing upon the Department of the Receiver General.

Minutes of Council, Lower Canada, 24 November, 1823.[1]

His Lordship caused to be read a Memorandum dated Downing Street 14th July 1823, respecting the Accounts of the Receiver General, after which His Lordship was pleased to express himself as follows:

Observations of the Governor in Chief, and determination of His Excellency, with respect to the Receiver General.

"It is already recorded by the Report of a Committee of the Executive Council on the State of the Receiver General's Chest in the Month of april last, that a Balance of Seventy Nine Thousand Pounds was then standing on his account as available for the Public Service; but from a Statement made by the Receiver General it appeared that this sum though acknowledged to be due was not actually in the Chest, nor immediately forthcoming and the Receiver General urged the necessity of some time being allowed him to provide it." "To comply with his request as far as was in my power and consistent with my Duty I made arrangements by deferring Payments and Warrants for a certain time–I also acceded to the Proposal to lay the state of matters before His Majesty's Ministers, and Mr Davidson proceeded to England under a promise to return by the Month of October with whatever decision might be obtained on the Subject"–

"In the Month of August the Receiver General made a further declaration that he was no longer able to pay any Warrants issued upon his Chest–This unexpected Stop forced me to appoint a Commission to superintend the Transactions of the Receiver General's Department and to relieve the Civil Government by advances from the Military Chest until the Period when Mr Davidson was expected."

"I have waited to the last moment, but now my duty is imperative, and the steps to be taken are enjoined by my Instructions. I must consider the Receiver General to be a Defaulter to the Public to the amount of Seventy Nine Thousand Pounds reported, or such other sum as a final adjustment of his Books shall shew."

"Under this view it is my duty to suspend the Receiver General from his Offices and Functions and to appoint another until the Kings pleasure shall be known, or until the Receiver General shall replace all the deficiency from the Chest and report himself again prepared to proceed."

"It is further my duty to order an Investigation of these accounts and all regular steps to be taken by the Law Officers of the Crown to secure the Crown and the public against ultimate loss.

"This I now submit to the Council that the necessary Forms may [sic] proceeded upon unless objections shall appear to the view I have taken of the whole subject."

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[1]*Lower Canada, State Book J. pp. 474-476.*

Minutes of Council, Lower Canada, 1 December 1823.[1]

His Lordship caused to be read the Draft of a Message to the House of Assembly respecting the state of the Receiver Generals Chest, and the steps which His Lordship had been compelled to take with regard to that Officer.

J. Hale Esq^{r}. appointed Rec^{r}. Gen^{l}. and Tho^{s}. Young Esq^{r}. appointed Inspector Gen^{l}. of Provincial accounts.

At the same time His Lordship informed the Board that he had issued a Commission appointing John Hale Esq^{r} to be Receiver General till His Majesty's pleasure shall be known—Also a Commission appointing Thomas Young Esq^{r} to be Inspector General of Public Provincial Accounts.

Ordered by His Excellency that a letter be written by the Clerk of the Council to the Hon^{ble} W. B. Coltman and Jacob Oldham Esq^{r} to inform them of M^{r} Hales appointment and to desire they will pay over to him the Balance of Public Monies now remaining in their hands.

Wilmot Horton to Dalhousie.[2]

Private:

Downing Street,
9th Octr. 1823

My dear Lord,

I think it better to state in a private letter to your Lordship that as the Office of Receiver General of the Provincial Revenue was imposed on Mr. Caldwell by the Assembly without allowing him any additional salary, it is impossible to suppose that the Parliament of this country will make good the defalcation of the Colonial revenue entrusted to him under such circumstances.

I have the honor to remain,
Your most obedient humble servant

R. WILMOT HORTON.

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[1] *Lower Canada, State Book J. p. 477.*
[2] *Dalhousie Papers, Vol. 7.* The following year, this stand was taken officially, see *below p. 323.*

HOUSE OF ASSEMBLY ON RECEIVER GENERAL'S CHEST, 3 FEBRUARY, 1824.[1]

Mr. CUVILLIER from the Committee to whom was referred His Excellency's Message of the first December last, the paragraph of the Speech from the Throne at the opening of the Session, and other matters relating to the Receiver General's Chest, reported as follows:—

"Your Committee, considering the great importance of the matters to them referred, as well in respect to the property of the subject and to the rights of the House, as in respect to the Government and the individual concerned, have proceeded with great attention and deliberation on the objects of reference, with a view to arrive at conclusions founded on truth and justice, which alone, in the opinion of your Committee, can contribute to any beneficial result.

Your Committee have thought themselves bound to confine their enquiries within the following heads, viz:

1. The nature and amount of the defalcation of the monies granted to or vested in His Majesty, for the public uses of the Province, in the hands of His Majesty's Receiver General.

2. The mode in which it may seem best to proceed on the present occasion for the purpose of procuring the reimbursement of the amount of such defalcation, for the uses for which the money was raised.

3. The measures that it may be necessary to take, in the mean time, to maintain the public faith with persons who have legal claims against the Government remaining unpaid.

4. The security which will be necessary to prevent the recurrence of similar defalcations in future.

Your Committee have called before them and examined on these heads, the Chairman of the Committee of His Majesty's Executive Council for the Audit of Public Provincial Accounts, the Receiver General of the Province, and the late Inspector General of Public Provincial Accounts; they have also collected, in addition to the documents referred to them, several others connected with the subjects referred, the whole of which are annexed to the minutes of evidence.

Your Committee conceive that it cannot be questioned, that His Majesty's subjects in this Province have an absolute property in their goods and estates of whatsoever description; and that no part thereof can be taken from them, or applied to public uses, without their consent and according to Law.

The House of Assembly, as the representative body, can alone give the consent of the subject in such cases, and it is its constitutional duty to see that this right, which is the best security of all the other rights of the subject, is not violated.

The peculiar circumstances under which the Assembly of this Province was placed shortly after the establishment of the present Constitution, have however hitherto prevented it from fully maintaining and securing the rights of the subject, in regard to the application of the monies raised within the Province for the public uses thereof.

[1]*Quebec Gazette, 9 February, 1824.*

By the Royal Instructions to His Excellency Alured Clarke, Esquire, Lieutenant Governor of the Colony, for the time being, communicated by His Excellency to the House of Assembly, on the 26th February, 1793, before any money Bill was passed by the House, it was informed, "That in all Laws or Ordinances "for levying money, or imposing fines, forfeitures or penalties, express mention "be made, that the same is granted or reserved to Us, our Heirs and Successors, "for the public uses of the said Province, and the support of the Government "thereof, as by the said Law shall be directed, and that a Clause be inserted, "declaring that the due application of such money, pursuant to the directions "of such Law, be accounted for unto us, through our Commissioners of our "Treasury for the time being, in such manner and form as we shall direct."

Your Committee accordingly find that, in all Laws passed in this Colony, raising monies on the subject, this clause of the Royal Instructions has been complied with. Indeed it must have been obvious that the Governors of the Colony, being a branch of the Legislature, and the immediate servants of the Crown, and responsible to it, could not depart from these instructions: and that in fact no money Bill could be passed without its being in conformity to those Instructions. The high character of the British Government, particularly in regard to the security of the public monies confided to it, offered indeed perhaps the best security for the safe keeping of the Provincial funds; and certainly must, at the time, have precluded all idea of danger from the deposit and superintendence which these instructions required.

The public monies for the uses of this Province, whether they consisted of the monies raised under Acts of the Imperial Parliament, or formed part of the Revenue under Provincial Laws, or accrued to the Crown from territorial sources, existing under the French Government, and so liberally relinquished by His late Most Gracious Majesty George the Third, in favor in the Province, were thus payable only into the hands of His Majesty's Receiver General for the Province.

The following extract from the Commission or Letters Patent granted to John Caldwell, Esquire, as Receiver General, dated at Westminster, 19th November, 1809, shew the duties of this officer in respect to the payment of the public monies and the tenure and accountability of the office: "which said "Revenues, Duties, Imposts, Penalties, Territorial or Casual Revenues, Fines, "Rights, or Profits, and all arrearages of the same, so to be received are to be "answered, paid and applied towards defraying the expenses of the administra-"tion of Justice and of the support of the Civil Government in the said Province, "according to such Warrant or Warrants as the said John Caldwell, shall from "time to time receive from our High Treasurer, or Commissioners of our Trea-"sury, or any three or more of them for the time being, and for the better encour-"agement of him the said John Caldwell, in the execution of his said office, "we have given and granted, and by these presents do give and grant unto "him, the said John Caldwell, the yearly salary or allowance of four hun-"dred pounds of lawful money of Great Britain, the same to commence from "the day of the date of these our Letters Patent, and to be retained out of the "monies arising by the said Revenues, which shall be received or collected by "him during his continuance in the said office. To have, hold, exercise and "enjoy the said office of Receiver General of the Revenues and premises afore-

" said unto him, the said John Caldwell, together with the said salary or allow-
" ance of four hundred pounds, by the year, during our pleasure. Provided
" nevertheless, and our express will and pleasure is that the said John Cald-
" well, before his entrance upon the execution of the said office, or receiving
" the salary thereof, shall give or procure good security to be given in our
" Court of Exchequer in this part of our United Kingdom of Great Britain
" and Ireland, called England, to the good liking of the Commissioners of our
" Treasury or our High Treasurer of Great Britain for the time being, in the
" sum of ten thousand pounds in the whole, and likewise shall enter into a
" Bond or Bonds to the good liking of the Commissioners of our Treasury or
" our High Treasurer of Great Britain for the time being, in the like sum of
" ten thousand pounds, payable in our Province of Lower-Canada, for the
" duly rendering into our Exchequer, according to the course thereof, an
" account of and duly answering to Us, our Heirs and Successors, all monies
" which he shall have received by virtue of said office."

Your Committee have not been able to obtain the opinion of the Law Officers of the Crown on the legal responsibilities of the Receiver General for the faithful execution of the duties of his office, or on the legal means, in the power of Government, to secure the amount of the late defalcation and replace it in the Chest. It is presumed, however, that if any Legislative provision had been necessary to that effect, a recommendation for the enactment thereof would long ago have been made to the Colonial Legislature on the part of His Majesty's Government.

Your Committee have not been able to ascertain the existence of any Warrant or Warrants from the Treasury, under the authority of which the Receiver General is required by his Commission, as before recited, to pay over the monies granted or vested in the Crown for the public uses of this Province; but the Commission to His Excellency the Governor in Chief, which in this respect, is similar to the previous Commissions granted to the Governors of this Province, contains the following clause:

" You are to give Warrants, under your hand for the issuing of public
" monies for all public services, and we do particularly require you to take care
" that regular accounts of all receipts and payments be duly kept, and that
" there be transmitted every half year, or oftener, copies thereof properly
" audited to our Commissioners of our Treasury, or to our High Treasurer for
" the time being, to the end that we may be satisfied of the right and due appli-
" cation of the Revenue of our said Provinces, with the probability of the
" increase or diminution of it under every head and article thereof ".

Under these instruments, it appears to your Committee that the aforesaid monies have been paid over and accounted for by the Receiver General of this Province, before and since the establishment of the present Constitution.

At no time has that officer accounted to the Legislature of this Province or under its authority, nor have any of his accounts been laid before it, previous to that of the 17th November 1823, embracing a period only from 11th April, 1823, to the 16th August of the same year, both days inclusive, transmitted with the Governor's Message of the 1st December last. In this account the

balance due by the Receiver General is stated at £96,117 13 0¼ Sterling, equal to £106,797 7 9½ Currency.

This Balance is the result of the receipts and disbursements of the Receiver General of this Province, from a period nearly commensurate with the establishment of the present Constitution.

It appears by an instrument produced to your Committee by Mr. Caldwell, dated at the Treasury, 11th August, 1819, that there was a balance due by the late Henry Caldwell, Esquire, Receiver General, on an account from the 9th July, 1794, to the 11th April, 1806 of £28,722 15 1 Sterling; & on an account including the above balance from 11th April, 1806, to 20th May, 1810, £39,874 10 10, which balance, the said instrument states, "having been paid over to this "accountant's representative and successor in office, John Caldwell, Esqr. the "present Receiver General, who is charged with the same, in his account of "that service from 6th June, 1810, to the 10th October, 1812, audited by the "Commissioners for auditing Public Accounts, the 18th June, 1819. This "accountant, Henry Caldwell, is thereupon even, and he is quit."

By another instrument from the Treasury, 28th January, 1820, it appears that John Caldwell, on the accounts from the 11th October 1812, to the 10th October 1813, was indebted in a balance of £54,535 4 0¼, which being included in the period from the 11th October 1813 to the 10th October 1814, left the said John Caldwell indebted in a balance of £92,635 9 6 Sterling.

In a letter dated, Audit Office, Whitehall Place, 23d November 1821, and signed Wm. Walter, Sec'y. the balance, according to the Auditor's statement, is £121,588 15 2¼, due by John Caldwell: and it is added "I am directed to give "you notice that the said state will be forthwith laid before the Commissioners "of His Majesty's Treasury." The acknowledgment of the receipt of the last account transmitted by Mr. Caldwell, for the year preceding the 10th October, 1821, is dated 22d October, 1822, in answer to a letter transmitted with the same, dated 9th September 1822.

These accounts (not only embracing a period of about thirty years of the Provincial receipts and expenditures, but also various payments and repayments between the Receiver General's chest and the Military chest, of which the House has not had any account,) your Committee have conceived to be altogether beyond the reach of their examination, even if they had called for them together with the necessary vouchers and authorities, for the purpose of being enabled to pronounce on the legal application of the said monies, or the correct amount of the above-stated balance.

On the first head of enquiry, your Committee are of opinion, that the whole of the funds levied on the subject in this Province, and granted or vested in His Majesty under the afore-mentioned instructions, and paid into the hands of His Majesty's Receiver General, accountable to His Majesty, through the Lords Commissioners of the Treasury, were of the nature of a deposit in the hands of the Imperial Government; and that the precise amount of the defalcation can only be correctly ascertained by the authority under which he has hitherto accounted.

In the mean time, it may be taken for granted that the balance stated to be due by the Receiver General in the account current, signed by him, of 17th November, 1823, is owing by him to the Public Funds of the Province: and

your Committee have ascertained that no part of the said Balance has been paid over by him to the officer lately appointed by His Excellency the Governor in Chief to fulfil the duties of that office.

It appears to your Committee that the Receiver General's half-yearly accounts, in the form of the account of the 17th November 1823, have, under the authority of the afore-recited article of the Commission of the Governor of the Province, undergone a preliminary audit in His Majesty's Executive Council for the affairs of the Province, previous to their being submitted to the final Audit at His Majesty's Treasury in England, and it appears that the Commissioners for auditing the Public Accounts, have been chiefly guided by the Reports of the preliminary Audit here.

This audit is not authorized nor regulated by any Provincial Law, nor has any proposition on the part of the Imperial or Colonial Government ever been submitted to that effect, although the House, since it has been charged with supplying the Civil Expenditure of the Province, has constantly refused to acknowledge the establishment of a proposed Board of Audit, till such regulations could be effected.

The only check on the part of the Legislature which has existed in the Colony, has been afforded by the Statements laid before it by the Governors of the Province. These statements have been made up in the Office of the Inspector General of Provincial Public Accounts, and latterly by the Chairmain [sic] of the Committee of Audit of the Executive Council, both acting under the authority given to the Governors by the afore recited paragraph of their Commissions, and of His Majesty's Treasury in England.

These Statements have not contained the whole of the receipts and payments of the monies placed in the Receiver General's hands for the public uses of the Province. The balances of his yearly Accounts were never stated to the Legislature; but a distinction was made between different parts of the Provincial Revenue, which, it appears from the two documents from His Majesty's Treasury already referred to, was not acted upon in England; thus, a balance of monies at the disposal of the Legislature was submitted, of which the following is a statement since 1810, compared with the real balances stated by the Receiver General, in his Accounts submitted to the Executive Council for the affairs of the Province for a preliminary audit, previous to their transmission to the Treasury.

Period	Balance in the hands of Mr. Caldwell, Receiver General	Period	Balance at the disposal of the Legislature	Balance short of appropriations
10th Oct. 1810	19259 5 2	10th Oct. 1810	54942 3 6	
1811	20119 19 7½	1811	76722 2 7½	
1812	12124 15 6	1812	12836 16 3¾	
1813	18092 15 11	1813	.....	31045 14 8½
1814	21737 2 9	1814	45175 14 0½	
1815	39568 18 5¼	1815	42896 16 7	
1816	96777 3 0½	1816	133918 10 4¼	
1817	65606 13 4	1817	47363 18 5	
1818	43013 0 3½	1st Novr. 1818	57377 18 3½	
1819	54826 16 11½	1819	45528 18 7	
1820	67185 7 9¾	1820	113788 5 6	
1821	81823 3 6¾	1821	135521 18 1¾	
1822	87816 7 1¼	1822	138230 1 0¾	
16th Aug. 1823	96117 13 0¼	1823	.....	

This distinction and the payments made out of the money, avowedly at the disposal of the Colonial Legislature, without its authority, and the want of all check on the part of that body on the issues of money by the Receiver General, and the absolute irresponsibility in the Colony of that officer and those under whose direction the issues were made, could not fail, in the opinion of your Committee to lead to abuses, which have finally produced the present unfortunate result.

It appears however from the report of the Committee of the House of Assembly on the public accounts for the last year, that since the commencement of the present constitution, monies have in fact been raised on his Majesty's subjects in this Colony, sufficient to cover all the expenses of the Civil Government both authorised and unauthorised by Law, deducting from the said expenses the unauthorised disbursements for the Militia during the late American War, a service which partook more of a military than a civil character.

Yet so long as, nominally at least, any deficiencies which might occur in the Funds raised in this Province, for the support of the Civil Government, was to be made good from British Funds, it was not to be expected, that the Colonial Legislature would very rigidly enquire into the controul and management of these Funds.

The rapid increase of the Civil expenditure from 1799 to 1810, which doubled in ten years and the absolute want of all check in the Colony to that increase, no doubt partly influenced the Assembly in 1810 to make an offer of providing for all the necessary expenses of the Civil Government.

It will appear from the Journals of the House, that a Bill was introduced on the 20th February, 1815, "to appoint Commissioners to settle the public "accounts and look into the state of, and count the cash in the Treasury, and "to oblige the Receiver General to keep a general account of cash;" which passed the second reading and was referred to a Committee of five: and on the 13th January, 1821, a Bill for similar purposes was again introduced, and after going through all the previous stages, it was referred to a Committee of the whole, which sat on the 8th March, but rose without reporting.

These proceedings shew that doubts and apprehensions existed at that time, on the state of the Receiver General's Chest. The high confidence which was, however, continued to be reposed in the justice and liberality of His Majesty's Government in Great Britain, and the want of any recommendation for the purposes of these Bills from the Executive, seems to have been still sufficient, to prevent these apprehensions from producing any further proceeding on this subject.

But when the charge of the whole Civil Expenditure of the Colonial Government was, in 1818, thrown upon the Colony, in conformity to the offer of the Assembly in 1810, the House seems to have been solicitous, to acquire a sufficient check over the expenditure, by insisting that no issues of monies placed in the Receiver General's Chest, for the public uses of the Province, should be made, without annual and special appropriation by the Colonial Legislature. The public Records of both Houses, and the Speeches from the Throne will shew how invariably this claim has since been maintained by the Assembly, and resisted by the two other Branches of the Legislature.

Your Committee will however refer only to the following paragraph, copied from the most solemn of all the proceedings of the House, on this subject, namely, an address to His Majesty, transmitted at the prayer of the House on the 25th January, 1822, by His Excellency the Governor in Chief.

"The division of the Legislative, Executive and Judicial Powers, the inde-"pendence of the Judges in the functions of their office, as also the responsa-"bility [sic] of the officers of Government, essential attributes of the constitu-"tion, are well marked in *Great Britain;* but do not exist in this Province, "where powers and functions which mutually exclude each other, are united in "the same persons. These circumstances, in addition to the remoteness of the "Province from the Empire and the Throne, absolutely place it beyond the "power of Your Majesty's Ministers, to superintend the details of its adminis-"tration, especially in what regards the application of its Revenue, which can "only in fact be superintended by the Colonial Legislature, and more especially "by the Assembly, as it is in the other British Colonies: any other mode of "control might prove impracticable and illusory."

His Majesty's Government in England was, by these proceedings sufficiently informed of the insufficiency of the check which had hitherto existed on the issues of monies from the Provincial Funds: no remedy, no Legislative provision, had such been deemed necessary, either in the opinion of His Majesty's Ministers at home, or those acting for them and under their instructions here, have since, or at any time preceding, been recommended to the Legislature: although without such recommendation, such provision could not be successful. Both must have been fully aware, from the Receiver-General's semi-annual accounts, that the balances in his hands were generally less than the money stated annually by the Colonial Government to be actually in his hands, and at the disposal of the Legislature.

Under the whole of the aforementioned circumstances, your Committee cannot for a moment hesitate in expressing its opinion of the justice of an appeal to the well-known honor and liberality of the British Government on the present occasion. The monies levied on the inhabitants of this Colony for the public uses thereof, deposited in the hands of an Officer of that Government, in conformity to Royal Instructions, and accounting only to it, have been diverted from these uses, without the possibility of its being prevented on the part of the people of the Colony.

Your Committee, although all the responsibilities of the Receiver General, and the securities given by him, are towards His Majesty's Treasury only, have thought it expedient to call upon him to state what means he has of making good the defalcation acknowledged by him; and they refer to his examination, hereunto annexed.

Your Committee having come to an opinion that the House ought to look to the justice of the Imperial Government for the amount of the defalcation of the Provincial Funds in the hands of the Receiver General, they cannot presume to pronounce on the reasonableness of his offers, or on the claims therewith connected.

In the account of the Receiver General, and of Messrs. Coltman and Oldham, entrusted, under the authority of His Excellency the Governor in Chief, with the business of the Receiver General's Office, referred to your Com-

mittee, with the message of the 1st December last, your Committee observe several payments of money made into the hands of these Gentlemen, under Warrants of His Excellency the Earl of Dalhousie on the Commissary-General, in aid of the expenses of the Civil Government. Your Committee, for the reasons already stated, cannot ascertain how far these, and any other similar payments which have been made, at other times, from the Military Chest, may have been necessary from any actual deficiency in the funds placed in the hands of the Receiver-General for the uses of the Province. They observe, however, that in addition to payments manifestly made, which have not been authorised by any law of the Colonial Legislature, there are in the papers transmitted to His Majesty's Government by Mr. Davidson, claims for various payments to the Clergy, from 1st May, 1813, to 1st November, 1817, amounting to £26,911 12 9 sterling, which were at no time required to be provided for by the Legislature, and which have been, both before and subsequently to the engagement of the Province to pay the Civil Expenditure, provided for from the military chest.

Your Committee conceive that His Majesty's Treasury alone, it being in possession of the whole of the Receiver-General's accounts, and also the account of the military chest in the Canadas, and being thoroughly acquainted with the authority on which these intermixtures of two funds, separate in their nature and objects, have been made, can settle the claims of the one chest upon the other, or have sufficient power and authority to effect such a settlement.

Your Committee have not considered it within the limits of their reference, to examine the items in the accounts submitted with the message, as that duty will more properly belong to any Committee to whom may be referred the annual accounts.–Your Committee cannot however refrain from expressing their satisfaction with the mode of keeping these accounts, and expressing its conviction that similar accounts of the receipts and payments of the Provincial Revenue, by the Receiver-General, would contribute to prevent the recurrence of many of the financial difficulties which have existed.

Your Committee need not recal to the House its engagements to provide for all the necessary expenses of the Civil Government of the Province. In so far as has depended on the House, it has ever been ready to make that provision. The funds raised within the Province have, at all times since the offer of the House was accepted by His Majesty's Government, been more than sufficient to meet that expenditure. The present defalcation in the funds, unavoidably placed in the hands of an Officer over whom the House had no control, can alter nothing in its engagements. Your Committee conceive that, seeing the immediate wants of the Government, the necessity of preserving public credit, and the length of time that must elapse before the humble representations of the House, can be laid at the foot of the Throne, and be determined upon by the Imperial Government, that immediate steps ought to be taken to place a sum of money in the chest, sufficient to pay off the sums due on the appropriations of the last Session of the Legislature; and for this purpose, your Committee in the present distressed state of the Province, can see no other expedient equally prompt and effectual, as the authorising a Loan, redeemable in a certain number of years, setting apart annually out of the

existing Revenue a sufficient sum to pay the yearly interest, and a proportion of the principal, sufficient to extinguish the whole amount at the expiration of the period at which it may be made redeemable.

Your Committee find, by Messrs. Coltman and Oldham's account, transmitted with the Governor's message of 1st December last, that, including all payments from the military chest in aid to the Civil Government, the balance of cash in hand, on the 29th November 1823, was £12,042 4 6 sterling; and that the amount of unpaid appropriations made at the last Session of the Legislature, was £20,685 18 5 currency; and the amount of Warrants issued and unpaid, stated to be chargeable against the funds of the Province, was £5,626 9 2 sterling; leaving a balance of claims against the Government beyond the amount of cash in hand at the aforementioned date, of £12,201 11 3 sterling. With respect to the appropriations which have remained unpaid, your Committee conceive, that it is a fit subject for the consideration of the House, whether payments not authorised by special enactments, ought, on any occasion, to be made in preference to the express appropriations by law.

Your Committee deem it indespensible, in order to avoid the danger of the recurrence of misfortunes, similar to those which now occupy its attention, that a Bill be introduced to regulate the office of the Receiver-General; and also the audit of the Public Provincial Accounts, previous to their being submitted to the Legislature, and to the audit of His Majesty's Treasury.

Your Committee are of opinion that it would be expedient to submit without delay, to His Majesty's Government in England, a statement of all claims up to the present time, against the Imperial Government, for monies raised on the subject in this province, and disposed of under its authority, without appropriation by the Colonial Legislature, passing such acts of indemnity to the advisers, and all others concerned in the payments of such parts of these monies as have been admitted, by vote of the House.

The placing of all the past accounts in this way, in a train of settlement, your Committee conceive to be indispensibly required, for the correct management of the financial concerns of the country in future, and for the satisfaction and good understanding of all the Branches of the Colonial Legislature.

To complete so desirable a result, your Committee are of opinion that the Executive Government ought to be earnestly requested to bring the outstanding accounts on Letters of Credit, to a speedy settlement; the amount of which, was stated last year at £111,890 17 2 currency, and is stated in the Receiver General's account of the 17th November last, at £116,639 15 1½ sterling.

The whole nevertheless humbly submitted.

AUSTIN CUVILLIER,
Chairman.

TRIAL BY JURY.

RESOLUTIONS OF LEGISLATIVE COUNCIL, LOWER CANADA, 3 JANUARY 1824[1]

Resolved, That it appears to this Committee to be expedient to extend the benefit of the Trial by Jury, at the option of the Plaintiff or Defendant, to all personal Actions in which the remedy sought in compensation in damages only, for some wrong sustained, by reason of some *delit,* or *quasi delit.*

Resolved, That, it appears to this Committee to be expedient to authorise the Court of Law of Original Jurisdiction in this Province, at their discretion, to order a special issue of one or more points of mere fact, in cases of difficulty, to be tried by a Jury, except in such cases as it shall be found right to except from this rule.

EXTRADITION.

OPINION OF ATTORNEY AND ADVOCATE GENERAL, LOWER CANADA.[2]

QUEBEC 10th January 1824

SIR,

In answer to Your Letter of the 5th Instant respecting a person of the name of John Craig a Prisoner in the Gaol at Montreal We have the Honor to inform You for the information of His Excellency The Governor in Chief that We are of opinion this Man could be legally delivered over to the State of New York if an Application were made for that purpose by the Governor of the State of New York to His Majesty's Government in Canada–It is laid down by the Writers upon the Law of Nations that since one State cannot admit within its Territories another foreign power to exact punishment, it seems reasonable that the State where the Offender lives, or has taken Shelter, should upon application being made to it, either punish the demanded person, or else deliver him up to be treated at the discretion of the injured party–But in most parts of Europe this right of demanding fugitive Delinquents, has not been insisted upon, unless their Crimes be such as affect the State, or are of a very heinous and malignant Nature–As for lesser faults it has been the Custom to connive at them, unless by the Articles of Treaty it has been particularly agreed on to the Contrary–

From the geographical situation of the two Countries it is highly expedient that the most liberal construction should be given to the principles of international Law–

John Craig is detained in the Montreal Gaol upon a Bill of Indictment found against him and others for having in their possession a rolling press and plates to forge bank Notes–His Trial will come on between the 25th of February and the tenth of March–If he should be acquitted We see no objection

[1] *Journals of Legislative Council, Lower Canada, 1823-24, p. 61.* A Bill was passed and sent to the Assembly but was never returned.

[2] *Lower Canada Sundries, S. 168, folio 12.* A simple extradition order is given in *S. 187, folio 84* (1827).

to his being delivered over to the State of New York, if the Governor of that State should make the direct application to His Majesty's Government in Canada and send in an Officer to receive him–

The papers as they appear here may be a fraud practised on both Governments to get Craig out of the Montreal Gaol–

We have the Honor to be
Sir,
Your most Obe^{t} Servants

NORM FITZ UNIACKE
Att^{y} Gen^{l}

G: VANFELSON
Adv. Gen.

CLERGY RESERVES.

Opinion of James Stephen.[1]

Lincoln's Inn
9 Janry 1824

Sir,

In compliance with your directions, I have perused a Petition from the Ministers and Elders in connection with the established Church of Scotland in Upper and Lower Canada, and the Petition from the Corporation for superintending, managing, and conducting the Clergy reserves, in the province of Lower Canada; and the opinion of His Majesty's Advocate, and of the Attorney and Solicitor General, dated the 15th of November 1819[2], together with the various documents which have been transmitted to Lord Bathurst, in support of, or in opposition to the claims of the Clergy of the Church of Scotland; and with reference to the various papers above mentioned, I have to submit to you, for Lord Bathursts consideration, the following remarks–

The object of the Petition of the Clergy of the Church of Scotland in Canada, is to obtain an order from His Majesty, directing, that a portion of the land reserved by virtue of the statute 31 Geo 3^{d} c. 31, for the maintenance of a Protestant Clergy, in the Upper and Lower Provinces, may be appropriated for the support of the Clergy of the Church of Scotland in Canada–

The object of the Petition of the Corporation for managing the Clergy reserves, which consists exclusively of clergymen of the Church of England, is to prevent any part of these lands from being granted for any purpose but that of maintaining the clergy of their own persuasion–

In November 1819, the Law Officers of the Crown reported to Lord Bathurst their opinion–First–That the provisions of the Statute 31 Geo. 3^{d} c. 31 for the support of a Protestant Clergy *may* be extended to the clergy of the Church of Scotland, and not confined solely to the Clergy of the Church of England–

[1] *O. 169, pp. 91-94.*
[2] See *above p. 28.*

Secondly–That those provisions do not extend to dissenting Ministers, or to any class of Protestant Clergy not established by law–Thirdly–That if the Governor is duly authorised, by the statute 31. Geo. 3. c. 31, to direct the application of the rents and profits of these lands, he will be justified, in point of law, in applying them to the maintenance of the clergy of the Church of Scotland, as well as those of the Church of England–and Fourthly–That the Governor, with the advice of the Executive Council, has a discretionary power to endow any particular Rectory, with the whole of the lands reserved within such Rectory for the maintenance of the Protestant Clergy, it not being incumbent upon His Majesty to make a reservation of any such lands for the Clergy of the Church of Scotland–

It appears therefore, from this opinion, that the Clergy of the Church of England cannot claim the whole of these lands as a matter of right; but that His Majesty, or the Governor, with the advice of his Council, may exercise a discretion as to the proportion which is to be appropriated to their support–It does not appear to me, that any of the documents now transmitted contain any statement which alters the grounds of this opinion, or suggests any argument which would probably lead the Law Officers of the Crown to a different conclusion–

It is, I conceive, therefore a question simply and exclusively of a political nature–in what proportions these lands should be divided between the clergy of the two Churches; or, whether they should not rather be exclusively appropriated for the maintenance of the Clergy of the Church of England–Supposing Lord Bathurst to be of opinion that it would be expedient to make a provision out of these lands for the Scotch Clergy, it will then become necessary to consider how that decision is to be carried into effect–Upon that point, the Law Officers of the Crown have not hitherto expressed their opinion, and I submit to you, that, considering the magnitude and importance of the Subject, it would not be fit to issue any directions for appropriating, to the maintenance of the Scotch Clergy, any part of the reserved lands, without first obtaining from the Law Officers of the Crown an opinion, as to the manner in which, and the authority by which, such an appropriation could be legally and effectually made–Upon this question it would probably be superfluous for me to express any opinion of my own, and until Lord Bathursts decision is formed respecting the propriety of making such a grant, it would be premature to ask the opinion of the Law Officers of the Crown–

I have the honor to be
Sir
Your most obedient
humble Servant

JAS. STEPHEN Jun^{r}

Robt Wilmot Horton Esq^{r}
&c &c &c

Resolutions of Assembly, Upper Canada.[1]

Clergy Reserves, and the Church of Scotland:—The following Resolutions relative to the Clergy of the Church of Scotland, have been adopted by the Assembly of Upper Canada.

"Resolved, That when the Kingdom of England and Scotland were united, the subjects of both was placed upon a footing of reciprocity, and were to enjoy a full communication of every right, privilege and advantage, and that neither the church of the one, nor the other, thereby gained an ascendancy, on the contrary that both were established by law, as National Protestant Churches within their respective Kingdoms, and consequently entitled to a participation in all advantages which have resulted, or may hereafter result from the said Union.

Resolved, That the Provinces of Canada were wrested from the dominions of France, by the united exertion of Great Britain and Ireland, and that the Churches of England and Scotland had at the conquest thereof, an equal claim to enjoy the advantages which might be derived from the said conquest.

Resolved, That by the act of the British Parliament, passed in the 31st year of his late Majesty's Reign, "The Governor, Lieutenant Governor, or person administering the government of this Province," was authorized to set a part a portion of one seventh of the lands for the support and maintenance of a Protestant Clergy.

Resolved, That if his late Majesty, when he graciously authorized an appropriation of land for the support and maintenance of a Protestant Clergy in this Province, did not contemplate a provision for the Clergy of the Church of Scotland, that they ought now to come under his Majesty's most favorable consideration by being otherwise provided for.

Resolved, That an humble address be presented to his Majesty, founded on the foregoing resolutions—praying that his Majesty will be graciously pleased to direct such measures, as will secure to the Clergy of the Church of Scotland, residing or who may hereafter reside in this Province, such support and maintenance, as his Majesty shall think proper."

[1] *Quebec Gazette, 15 January, 1824.* On March 4, 1823, the Assembly of Lower Canada passed a somewhat similar address, in which they also made a plea for the Dissenting Church, on the ground that "the Members of the Presbyterian Church of *Scotland* and the Dissenters will continue to be, as they are at present, much more numerous than the Members of the Church of *England.*" *Journals of Assembly, Lower Canada, 1823-24, pp. 345-346.*

ELIGIBILITY OF MEMBERS UPPER CANADA, 1824.

4 Geo IV. Cap III.[1]

An act to repeal the several statutes of this province respecting the election of members of the house of assembly, and the qualification of voters and candidates at such elections, and to reduce the provisions thereof, with some amendments, into one act, and also to provide against fraud in obtaining qualifications to vote at elections.

[Passed January 19, 1824.]

Preamble.

Acts regulating the electing members to serve in the house of assembly, and the qualification of voters and candidates at such elections, hereby repealed, viz.

Whereas it is expedient to repeal the several statutes of this province respecting the election of members to serve in the house of assembly, and the qualification of voters and candidates at such elections, and to reduce the provisions thereof, with some amendments, into one act, and also to provide against fraud in obtaining qualifications to vote at elections; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great Britain, entitled, "An act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled, 'An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province,'" and by the authority of the same, That

35th Geo. III, c. 2. an act passed in the thirty-fifth year of his late Majesty's reign, entitled, "An act to ascertain the eligibility of persons to be returned to the house of assembly;"

40th Geo. III, c. 3. an act passed in the fortieth year of his late Majesty's reign, entitled, "An act for the more equal representation of the commons of this province in parliament, and for the better defining the qualification of electors;"

48th Geo. III, c. 11. an act passed in the forty-eighth year of his late Majesty's reign, entitled, "An Act for the better representation of the commons of this province in parliament," and to repeal part of an act passed in the fortieth year of his Majesty's reign, entitled, "An act for the more equal representation of the commons of this province, and for the better defining the

54th Geo. III, c. 4. qualification of electors;" an act passed in the fifty-fourth year of his late Majesty's reign, entitled, "An act to repeal and amend part of an act passed in the thirty-fifth year of his Majesty's reign, entitled, 'An act to ascertain the eligibility of persons to be returned to the house of assembly;'" an act passed in

58th Geo. III, c. 9. the fifty-eighth year of his late Majesty's reign, entitled, "An act to repeal an act passed in the thirty-fifth year of his Majesty's reign, entitled, 'An act to ascertain the eligibility of persons to be returned to the house of assembly;'" and also to repeal an act passed in the fifty-fourth year of his Majesty's reign, entitled, "An act to repeal

[1] *Statutes of Upper Canada, 1791-1831, pp. 340-343.*

and amend part of an act passed in the thirty-fifth year of his Majesty's reign, entitled, 'An act to ascertain the eligibility of persons to be returned to the house of assembly,' and to make further and more effectual provision for securing the freedom and constitution of the parliament of this province;" and an act passed in the second year of his present Majesty, entitled, "An act to render ineligible to a seat in the commons house of assembly of this province, certain descriptions of persons therein mentioned;" be, and the same are, hereby repealed.

2d Geo. IV, c. 4.[2]

Persons having resided in a foreign country, or taken the oath of allegiance to a foreign state, shall not be eligible unless they have resided in this province seven years next before the election at which they shall be chosen.

II. And be it further enacted by the authority aforesaid, That from and after the passing of this act, no person or persons, of what condition soever, having been a bona fide resident in any country, not being under his Majesty's government, or who shall have taken the oath of allegiance to any other state or power, shall be eligible to be proposed, chosen, or elected as a representative or representatives of any city, county, riding, or borough, or other place of any description, now or hereafter sending a representative or representatives to the house of assembly of this province, until such person or persons shall have resided in this province for and during the space of seven years next before the election at which any such person or persons shall be proposed, elected, or chosen as a representative or representatives, as aforesaid.

Penalty on such persons offering themselves as candidates, unless they shall have resided seven years.

III. And be it further enacted by the authority aforesaid, That if any person or persons, as aforesaid, not having resided in this province for seven years, as aforesaid, shall propose or offer himself, or themselves, as a candidate or candidates to become a representative or representatives of any county, city, riding, or borough, or other place, now or hereafter sending a representative or representatives and shall be thereof convicted by the oath of one credible witness, he or they shall forfeit and pay the sum of two hundred pounds.

Penalty on persons so disqualified if being elected they shall presume to sit.

IV. And be it further enacted by the authority aforesaid, That if any person or persons, as aforesaid, not having resided in this province for seven years, as aforesaid, whether such person or persons shall have proposed or offered him or themselves as a candidate or candidates, or not, for any county, city, riding, or borough, or other place of any description, now or hereafter sending a representative or representatives to the house of assembly of this province, as aforesaid, shall presume, upon such choice or election, to obtrude or present himself, or themselves, into the said house, as a representative or representatives, as aforesaid, he or they shall forfeit and pay the sum of forty pounds, over and besides the foregoing penalty, if such person or persons shall have incurred the same, for every day that he shall so obtrude or present himself or themselves.

[1]Second Session.

Persons having abjured allegiance to his Majesty, or having held certain offices in the United States of America, or being convicted of offences in a foreign country, subjecting them to infamous punishment, shall be disqualified to sit in the house of assembly of this province.

V. And be it further enacted by the authority aforesaid, That from and after the passing of this act, no person or persons, now resident within this province, or who shall or may at any time hereafter come into this province to reside, who shall or may have taken the oath of abjuration against his Majesty's government, or who shall have been a member of the senate or house of representatives of the United States of America, or any one of the said United States, respectively, or who may have held any of the executive departments of state in the said United States or state respectively, or who shall be, or may have been, convicted in any foreign country of felony, or of any offence, which, if committed in this province, would subject the offender to infamous punishment, shall be capable of being elected to serve as a member in the house of assembly of this province, any thing in this act, or any other law, usage, or custom, to the contrary notwithstanding.

Qualification with respect to estate required for a member to serve in the assembly.

VI. And be it further enacted by the authority aforesaid, That from and after the passing of this act, no person or persons shall be eligible to be proposed, chosen, or elected, as a representative or representatives of any county, city, riding, borough, or other place, of any description, now or hereafter sending a representative or representatives to the house of assembly of this province, unless he shall be possessed of an unincumbered freehold in lands or tenements in this province, to the assessed value of eighty pounds, lawful money of this province.

Oath which any candidate may be required to take.

VII. Provided always, and be it further enacted by the authority aforesaid, That every person who, from and after the passing of this act, shall appear as a candidate, or shall, by himself or any others, be proposed to be elected to serve as a member for any county, city, riding, borough, or any part or place now or hereafter sending a member to the house of assembly of this province, shall, and he is hereby enjoined and required, upon reasonable request to him, to be made at the time of such election, or before the day prefixed in the writ of summons for the meeting of parliament, by any other person who shall stand a candidate at such election, or by any two or more persons having a right to vote at such election, take a corporal oath, in the following form, or to the following effect:

"I, A.B., do swear, that I truly and bona fide have such a freehold estate, [here describe the estate,] over and above all incumbrances that may affect the same; and am otherwise qualified according to the provisions of law, to be elected and returned to serve as a member in the commons' house of assembly, according to the tenor and true meaning of the act of parliament in that behalf; and that I have not obtained the same fraudulently, for the purpose of enabling me to be returned member to the commons' house of assembly of this province. So help me God."

Oath as to residence required in certain cases.

VIII. And be it further enacted by the authority aforesaid, That if any candidate, as aforesaid, shall have resided in the United States of America, he shall, if required, in addition to the foregoing oath, take the following:

"I, A.B., do sincerely and solemnly swear, that during my residence in the United States of America, I have not taken or subscribed any oath of abjuration of allegiance to the crown of Great Britain; and further, that during my said residence, I have not held the office or appointment of senator, or member of the house of representatives of the said United States, or of either of the said United States, respectively, or held or enjoyed any office in any of the executive departments of state in the said United States, or state, respectively, So help me God."

By whom such oaths are to be administered;

IX. And be it further enacted by the authority aforesaid, That the oaths required by this act shall and may be administered by the sheriff for any such county, as aforesaid, or by the mayor, bailiff, or other officer or officers for any county, city, borough, riding, place or places, as aforesaid, to whom it shall appertain to take the poll, or make the return at such election for the same county, city, riding, borough, place or places, respectively, or by any two or more justices of the peace within this province; and the said sheriff, mayor, or bailiff, or other officers, and the said justices of the peace, respectively, who shall administer the said oaths, are hereby required to certify the taking thereof into his Majesty's court of king's bench, within three months after the same, under the penalty of forfeiting the sum of two hundred pounds; and if any of the said candidates, or persons proposed to be elected, as aforesaid, shall wilfully refuse, upon reasonable request to be made at the time of election, or at any time before the day upon which such parliament by the writ of summons is to meet, to take the oath or oaths hereby required, then the election and return of such candidate shall be void.

and certified.

The electing any candidate who shall refuse to take such oath, shall be void.

Fee for administering the oath and giving certificate.

X. And be it further enacted by the authority aforesaid, That no fee or reward shall be taken for administering any such oath, or making, receiving, or filing the certificate thereof, except two shillings and six pence for administering the oath, and five shillings for making the certificate, and five shillings for receiving and filing the same, under the penalty of one hundred pounds.

How fines imposed by this act are to be collected and applied, and accounted for.

XI. And be it further enacted by the authority aforesaid, That the fines and penalties imposed by this act may be recovered in his Majesty's court of king's bench in this province, by action of debt, bill, plaint, or information, wherein no essoigne, privilege, protection, or wager of law, shall be allowed, and only one imparlance, and one moiety thereof shall be immediately paid into the hands of the receiver general, for the use of his Majesty, his heirs and successors, towards the support of the civil government of this province, and shall be

accounted for to his Majesty, his heirs and successors, through the lords commissioners of his Majesty's treasury, for the time being, in such manner and form as his Majesty, his heirs and successors, shall please to direct, and the other moiety to the person who shall sue for the same.

Voters having taken the oath of allegiance to a foreign state, or were resident in the same, must reside seven years in the province, and take the oath of allegiance to his Majesty, before their vote can be received.

XII. And be it further enacted by the authority aforesaid, That no person shall be qualified to vote at any election of a member or members of the house of assembly, who shall have sworn allegiance to any foreign state, or have been a stated resident in the dominions of the same, unless such person or persons shall have been previously and bona fide resident in this province, or in some other of the dominions of his Majesty, for and during the term of seven years next preceding such election, and shall have taken the oath of allegiance to his Majesty.

Voters required (except in certain cases) to have been in possession of the estate in right of which they tender their votes, above twelve months before the elections.

XIII. And be it further enacted by the authority aforesaid, That no person shall be qualified to vote as aforesaid, in respect of any estate sufficient to qualify him by law, not having come to him by grant from the crown, descent, devise, or marriage, unless the deed of conveyance under which he claims to hold such estate shall have been registered three calendar months before the holding of such election, or unless he shall have been in actual possession, or in the receipt of the rents and profits thereof, for his own use, above twelve calendar months next before such election.

Election not to continue beyond six days.

XIV. And be it further enacted by the authority aforesaid, That no returning officer or officers shall continue any election more than six successive days, (Sunday, Christmas day, and Good Friday, excepted.)

XV. And be it further enacted by the authority aforesaid, That before any elector shall vote at any election of a member or members of the house of assembly of this province, he shall, if required by the returning officer, or any candidate at such election, in addition to the oath required by the act of the parliament of Great Britain, passed in the thirty-first year of his late Majesty's reign, entitled, "An act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled, 'An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province,'" take an oath in the form following; that is to say:

Oath which voters may be required to take.

"I, A.B., do swear, that the estate, in right of which I vote at this election, is— [here describe the estate, as the case may be,]— which I hold by grant from the crown, descent, devise, marriage, or conveyance, [as the case may be], and, [in case such estate shall have been derived otherwise than by grant from the crown, descent, marriage, or devise,] that I have been in actual possession, or in the receipt of

the rents and profits thereof, to my own use, above twelve calendar months, or, [as the case may be], that the conveyance to me of the same has been registered three calendar months."

Swearing falsely in any oath required by this act, or by 31st Geo. III, c. 31, to be deemed wilful and corrupt perjury.

XVI. And be it further enacted by the authority aforesaid, That if any person or persons shall be guilty of false swearing in any oath required by this act, or by an act of the parliament of Great Britain, passed in the thirty-first year of his late Majesty's reign, entitled, "An act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled, 'An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province;'" he shall, on conviction thereof, suffer the like pains and penalties, to which any other person convicted of wilful and corrupt perjury is liable, by the laws and statutes of this province.

CANADA TRADE ACT.

Debate in Assembly, Lower Canada, 2 February, 1824.[1]

In Committee of the whole on the Act passed in the Parliament of the United Kingdoms in 1822, to regulate the Trade of Upper and Lower-Canada, and for other purposes.

Mr. Bourdages,—Said, he regretted that the consideration of this Act should have been so frequently postponed: information had been asked from the Executive on the operation of this Act, which had not yet been received. It did not, however, require that information, to shew that the Act touched upon some of the most important rights of the people of this Province. Temporary Duties, which were originally imposed to meet the exigencies of the Province, and which had expired, had been continued in force by that Act. These duties had not been imposed for the uses of Upper-Canada, which, indeed, by agreement was to have a share in them; but they were only temporary, and had expired at the time to which they were limited. The renewing of them was not deemed necessary by the Legislature at the time; yet they had been renewed by the Imperial Parliament. We were the best judges of our own wants. This Act had, however, not only taxed the Colony; but restricted us from taxing ourselves. At a time when we had engaged to pay the expenditure of the Civil Government, we were reduced to the necessity of laying direct taxes or raising loans.

In another respect, he said, this Act had gone the length of authorising the Executive to change the tenure of our lands. The Territorial Revenue had been graciously granted to the Province by His late Majesty, and now, when we were burthened with the expenses of the Government, the Imperial Parliament had taken a step which went to destroy that Revenue. He would submit no resolution on the subject at present, still expecting that the information the House had asked for, would be laid before it; although, he said, the Act itself contained enough to justify our proceeding.

[1] *Quebec Gazette, 5 February, 1824.*

Mr. Speaker,[1]—Said, the present question was important and extremely difficult. We had to assert our rights, the rights of British subjects, which he conceived, had been unnecessarily infringed upon by the Imperial Parliament. He should call the attention of the House to two grievances, resulting from the Act under consideration.

This Act imposes Taxes on this Country, contrary to the general right of British subjects, and contrary to the particular right of the Colony. It was a principle of British law that the subject was not to be taxed without his consent. It was a right which British subjects carried with them to all parts of the Empire; it was their birth right. As a Colony we are subordinate to the Legislature of the Empire; but by the 18th of the King, which was declaratory of the Law as it had always stood, Parliament had renounced the right then claimed of taxing the Colonies, reserving only the necessary right of imposing taxes for the Regulation of Trade. In this case, as had happened in the Colonies now the United States of America, this necessary right of regulating trade had been exercised beyond what was necessary. The Honorable Speaker then entered into explanations of some length, to shew the limits of the power of regulating trade, conformably to the Act of the 18th of the King and the Constitutional Act of this Province. He said, that the continuing of Temporary Duties imposed by the Colonial Legislature, beyond the period of their duration, could never be pretended to be a proper exercise of the power of regulating trade. It was not, indeed, pretended that these Duties had been renewed for the Regulation of Trade, but for the professed purpose of settling difficulties between Upper and Lower-Canada relating to Revenue. Supposing that it had been necessary to tax us for the settlement of these differences, which he never could admit, he asked, had we been heard on the subject? had we been even called upon, or had an opportunity of being heard? we never had refused to settle the difficulties which had existed; had never been called upon to answer any complaints against us; but had been taxed upon the misrepresentations of the other party, contrary to the existing laws. This Province had never wished to prevent Upper-Canada from a free use of the St. Lawrence, or to raise a single farthing on the Inhabitants of that Province; it constantly offered to repay to Upper-Canada the whole of the Duties, which might have been paid in Lower-Canada on articles consumed in Upper-Canada, according to agreement; and even without agreement; if the right to tax us for the purposes expressed in the Act, were admitted, still the necessity of the exercise of such a power, did not exist.

It was, however, not only in this respect, that the Act appeared to him to be contrary to the rights of British subjects. It went to legislate for our internal concerns, to alter the tenure of our Estates, which were guaranteed to the Country by the Capitulation, by the Treaty of Peace, and the Act of 1774. It was impossible to separate the tenure from the property, it was part of the property as well as the laws which regulate it. Under what plea was this interference with our internal concerns supported? Was this also for the purpose of settling our differences with Upper-Canada? How was this sudden departure from the policy which had heretofore governed the British Parliament in respect to this Colony, to be accounted for? When it was attempted after the Con-

[1]M. Vallières de St. Réal.

quest to assimilate us to the then British Colonies, by changing the tenure, a measure which, then might have seemed reasonable, it was objected to, and the tenure of the Country maintained. He could account for the present proceeding only, by inferring that the Government and Parliament had been deceived, by the misrepresentations of interested parties; that notions utterly unfounded, in respect to our free tenure & belonging only to the old feudal tenures of Europe, had been disseminated; that appeals had been made to passion and prejudice, combining the whole against Lower-Canada in the absence of any one to speak for her: nothing short of this, he said, could account for such a violation of the right of property, as was contemplated by this Clause of the Act.

It seemed to him that the Colony had been taxed against the common right of British subjects, and contrary to positive British Statutes. That our internal concerns had been interfered with, against the right of property and the established Constitution, and the whole without any necessity.

After some observations by Mr. Bourdages, on the favorable nature of the Tenure of Lands in this Country, which enabled every man to become the free proprietor of the soil he cultivated, at a small annual acknowledgment not extending a penny an acre, the Committee rose and obtained leave to sit again on Saturday next.

MOTION FOR REPEAL OF CANADA TRADE ACT.

Resolution of Assembly, Lower Canada, 21 February, 1824.[1]

Motion to appoint a committee to prepare an address to the Governor, negatived.

Mr. *Bourdages* moved to resolve, seconded by Mr. *L. Lagueux,* that a Committee of seven Members be appointed to prepare and report with all convenient speed, the Draught of an Address to His Excellency the Governor in Chief, praying His Excellency will beseech His Majesty to be pleased to recommend to the Imperial Parliament the revocation and repeal of the Statute of the Third, *George* Fourth, Chapter one hundred and Nineteen, intituled, "An Act to regulate the Trade of the Provinces of *Lower* and *Upper-Canada,* and for other purposes relating to the said Provinces," inasmuch as the said Act contains certain dispositions contrary to the rights and interests of this Province, with power to send for persons and papers.

The House divided on the question .....

So it passed in the negative.

[1]*Journals of Assembly, Lower Canada, 1823-24, p. 258.*

BILL OF SUPPLY.

Instructions to Committee of Supply, Lower Canada, 23 February, 1824.[1]

An instruction to the Committee.

Mr. *Papineau* moved, seconded by Mr. *Quirouet*, that it be an Instruction to the said Committee, to take into consideration the following propositions:

1. That when the present Constitution was given to the Province, the Revenue was below the Civil Expenses of the Government, and that the difference between the Receipt & the Expenditure, has been drawn from the Military Chest.

2. That during several successive years, the resources of the Country were not sufficiently great for its Representatives to have it in their power to raise the Revenue, by new Taxes, to the level of the Expenditure, which continued to be in part discharged by the Military Chest.

3. That from the year Seventeen hundred and ninety four to the year Eighteen hundred and ten, the Expenditure of the Government has been raised from a sum a little under Twenty thousand pounds sterling a year, to a sum of nearly Fifty thousand pounds sterling a year, and that the rapid increase of the greater part of this Expenditure has never been authorized by the Provincial Legislature, the Salaries of several of the Public Officers having from time to time been increased, and Pensions created by mere Letters or Orders from His Majesty's Ministers, or by His Governors and Councils in the Province, without sufficient facility of effectually checking those unconstitutional measures, which tended ultimately to the appropriation of a portion of the Revenue without the consent of the People by their Representatives, at a time when the Assembly, not supplying the whole expense, could not pretend to its entire controul.

4. That during that period, the Public Expenditure was not sufficiently submitted to the Constitutional controul of the Representatives of the People, and to that strict superintendance which alone could prevent the establishment of a system of profusion, most dangerous to the liberties, and fatal to the interests of the Colony.

5. That during that period, as before and since, the Imperial Parliament has annually appropriated towards the Civil Expenses of several of the English Colonies, sums of money which have very seldom varied, and are nearly the same at this time as they were in seventeen hundred and ninety-four, and that that equality of appropriation demonstrates the efficiency and the inappreciable benefit of the controul which the Commons have exercised over that part of the Public Expenditure, as the rapid and much too high increase of

[1] *Journals of Assembly, Lower Canada, 1823-24, pp. 263-266.* On March 2, eighteen of these resolutions were presented to the House as part of the Supply Bill. Clauses 6, 15, 19 and 20 were omitted. The supplies were then voted item by item, which made it impossible for the Lgislative Council to accept the Bill.

the salaries of which the persons in Civil employ in this Colony have procured payment out of the Military Chest, by order of the English Ministry, without the Commons being informed thereof, demonstrates that any other controul than that of the Representatives of the People, who bear the burthen, is insufficient for restraining the public Expenditure within proper limits—

6. That in Eighteen hundred and ten, with a view of assuming the exercise of that right of controul over the public Expenditure, which is the indubitable right of English Subjects by their Representatives, one of their most important privileges, the most effectual means they could have found of obtaining the reform of abuses by causing, when they have deemed it necessary, the grant of supplies to be preceded by the relief of grievances, and to stop a system of profusion which was daily becoming more dangerous to the rights, and fatal to the interests of the Colony, its Representatives resolved that the House would, that Session, vote all the Sums necessary for defraying the Civil Expenditure of the Government; a Resolution, which could only have its effect with the concurrence of the will of the other authorities, which was not then obtained.

7. That in one thousand eight hundred and eighteen, the Governor in Chief, Sir *John Coape Sherbrooke*, desired, on the part of His Royal Highness at that time, now our Most Gracious Sovereign, in the King's Name, the Assembly of this Province, to provide for the Civil Expenses of Government, and to vote for that purpose, the appropriations necessary for the said year one thousand eight hundred and eighteen.

8. That that demand made in the King's Name, and accepted by this House, and which tended to establish a just equilibrium among the constituted authorities in this Province, to give to the Representatives the Constitutional controul which they ought annually to exercise over the whole Public Expenditure, as the Assemblies of Representatives in most of the English Colonies, have at all times exercised it, has been unjustly opposed by the Colonial Administration, interested in perpetuating the abusive system of excessive Expenditure, which it had induced the English Ministry to establish in its favor.

9. That the House of Assembly assumed, and again assume the engagement of providing for all the Civil Expenses of the Province, so far only as the whole of the Public Revenue, hardly sufficient to cover them, is placed at their disposal.

10. That the House ought to resist the pretensions advanced in the Messages of the Governor in Chief of the sixth February one thousand eight hundred and twenty-two,[1] and since, whereby he would pretend to establish in his own favor, in favor of the Executive Council and of some of the principal Members of the Administration, an illegal distinction, by means whereof a large portion of the Public Revenue would be permanently distributed among them, without the

[1]See *above p. 90.*

Assembly having it in their power to exercise any annual controul over the application of that variable portion of the Public Revenue, whatever might be its increase or diminution.

11. That these Messages tend improperly to establish that there are expenses of the Civil Government, and of the Civil Administration of Justice, which the Governor would have a right without an Act of the Legislature to pay fully, to the exclusion of other necessary expenses, under the ill founded assumption, "that those expenses belong to such local establishments, and objects of public charge as form no part of His Majesty's Civil Government, and are not connected with the Administration of Justice," in the number of which by illegal distinctions, are enumerated, the expenses of the Legislature, of the printing of Laws, of Pensions, of School Masters, of the Collection of the Revenue, of the apprehension and criminal Prosecution of accused Persons, of the maintenance of Prisoners, of the Salaries of the *Grand-Voyers*, and several other necessary Expenses of the Civil Government and administration of Justice.

12. That the two Houses of the Provincial Parliament are integral and essential parts of the Civil Government of the Province, and that the Officers necessary to the exercise of their functions, have an equal and the same right, as those who are necessary to the exercise of the Executive Power, or the Administration of Justice, to receive their Salaries; and that if the Revenue applicable to the support of the Civil Government and the Administration of Justice, were, at any time, insufficient fully to pay the Salaries of all the Public Officers, it would be very unjust that the Governor should pay to himself, should pay to his Councillors, & to some of the principal Members of the Administration, their Salaries in full, to the entire exclusion of the Salaries of the Officers of both Houses, and that in case of such a deficit in the Public Revenue, an equitable Legislature, if it saw no reasons or means of encreasing it, would cause all the Public Officers to bear a proportionable diminution of their Salaries.

13. That the printing of the Laws is an essential expense of the Civil Government, & that the precise sums which are necessary for securing their publication and distribution ought to be paid, even in case the Revenue should be insufficient for the full payment of the Salaries of the Public Officers, who, in that case, ought rather to suffer a reduction of Salary, than that the people should be deprived of a knowledge of the Laws which they are bound to obey.

14. That the expenses for the apprehension of Prisoners, and their detention before and after conviction, form an indispensable part of the Administration of Justice, and that the Bread and Water necessary for the support of their unhappy existence, ought to be supplied for them, before any Public Officer should receive his Salary in the whole or in part.

15. That the support of Schools is one of the most important duties of the Civil Government, and if the insufficiency of the

Revenue do [sic] not admit of devoting thereto, as large sums as in more prosperous times, the most strict economy in all departments ought to be adopted, rather than give no encouragement to establishments dedicated to instruction.

16. That the opening and keeping in repair of the Highways, is one of the objects to which the Civil Government ought to apply its attention, and that the Officers by Law charged with facilitating to the people of the Province, the means of obtaining the opening of new & the keeping in repair of old Roads, have an equal and the same right as the other Officers of the Civil Government have to receive their Salaries; and that in case of the insufficiency of the Revenue to pay all their Salaries, an equitable Legislature, if it had not motives or means to increase the receipt, would cause all the Officers to bear a proportional diminution of their Salaries.

17. That in considering the deficit existing in the Public Funds, through the failure of the Receiver-General; the amount of the appropriations due to Public Creditors; the insufficiency of the Revenue to admit of any local improvements; the disquieting necessity, (for the first time,) of negotiating a Loan to meet the engagements of the Government and supply its ordinary expenditure; and considering also, the extreme decrease both of the price of articles of consumption and of the profits of all the industrious classes of society, it was of strict justice towards the people of this Colony, to reduce, during the present year, the expenditure, instead of proposing to increase it as the estimates laid before this House require.

18. That His Excellency the Governor in Chief has taken upon himself, every year, from the commencement of his Administration to this day, to order, without any Law authorizing him thereunto or granting him an indemnity, the payment of various large sums of money levied on His Majesty's Subjects in this Province, either in his own favor, or in favor of many other persons in public employ; for the reimbursement of all which sums this House hold him personally responsible.

19. That although the prosecution for the recovery of these Monies, cannot take place before the Tribunals of the Province over which the Governor in Chief presides, it ought to be brought before the competent Tribunals in the United Kingdom of *Great-Britain* and *Ireland*, as soon as His Excellency may legally be holden to answer before the said Tribunals.

20. That this House have always been ready, and still are ready, to grant annually all sufficient appropriations to pay all the Civil Expenses necessary in the Province, upon being thereunto required by His Excellency the Governor in Chief, but that they ought not to comply with the demand now made to them, only to provide for some of those Expenses, when the Colonial Government persists in the illegal pretension, permanently to dispose, without the concur-

rence of the Legislature, of a large portion, annually variable, of the Public Revenue, in favor of the Governor, of his Council, of some of the Public Officers, to the exclusion of the payments due to other officers, and for the support of various Establishments of the Civil Government, and of the Administration of Justice.

..... Yeas .....(23)

Nays

Messieurs *Taschereau* and *Oldham*. (2.)

So it was carried in the affirmative, and

Ordered, That it be an Instruction to the said Committee to take the said propositions into consideration.

Address of Legislative Council, Lower Canada, 6 March, 1824.[1]

To the King's Most Excellent Majesty.

May it Please Your Majesty,

We, your Majesty's dutiful and loyal Subjects, the Legislative Council of Lower Canada, in Provincial Parliament assembled, most humbly beseech your Majesty to be graciously pleased to permit your faithful Subjects, the said Legislative Council, to lay at the foot of the Throne the Resolutions which accompany this Address, with the Reasons and Resolutions therein referred to, of March, 1823, as evidences of the loyal attachment of the Legislative Council to your Majesty's sacred person and Government, and as a solemn pledge of our unalterable determination to support your Majesty's just rights, and the constitutional prerogatives of the Crown, at all times, and against encroachments thereon of every description, as also of our fixed resolution to support the principles and practice of the Constitution granted to this Province; and the just rights and privileges of the Legislative Council under the same.

We most humbly, but most earnestly entreat your Majesty, to take into your Royal consideration, the growing embarrassments which surround the Executive Government of this Province, by the continued refusal of supplies, unless accepted upon terms that would lay the Officers of your Majesty's Provincial Government, and the Legislative Council, prostrate at the feet of the Assembly; and also the dangers which must necessarily ensue, if a corrective thereto be not speedily applied.

We therefore implore your Majesty, out of tenderness to your loyal Subjects in Lower-Canada, to take into your Royal consideration the evils which inevitably must ensue from the existing state of things, unless an adequate remedy be applied; and that your Majesty will be graciously pleased to recommend the state of this Province to the consideration of the Imperial Parliament, to the end that Legislative provision may be made to remedy the evils to which we have referred, and to prevent their recurrence in future; or that your Majesty will be pleased to adopt such other means, as your Majesty, in your great wisdom, shall deem fit and effectual for the purpose.

[1] *Journals of Legislative Council, Lower Canada, 1823-24, p. 203.*

Dalhousie's Speech on Prorogation, 9 March, 1824.[1]

Gentlemen of the Legislative Council,
Gentlemen of the Assembly,

Governor's Speech.

I am now to close a Session of the Provincial Parliament, the result of which I am much afraid will prove to be of little public advantage; at the same time your long and laborious attendance is entitled to my best thanks; But before I prorogue this Parliament, I think it important to the Country that I should here, as His Majesty's Representative, express my sentiments upon the general result of your proceedings during the several Sessions in which I have met you: I declare those sentiments in an earnest desire to attract the serious attention of every Member of this Parliament, of every man who values the prosperity of *Canada*, and I trust I know too well the principle of the British Constitution to express myself in any manner inconsistent with that respect which one Branch of the Legislature owes to another, or with those rights and privileges which belong to each respectively.

A claim has been made to an unlimited right in one Branch of the Legislature to appropriate the whole Revenue of the Province according to its pleasure, including not only that part of it heretofore granted to His Majesty, and which is appropriated by Acts of the Provincial Parliament to specific purposes, and subject to such distribution as the King may see fit, but even that portion also of the Revenue which is raised by the authority of the Imperial Parliament, appropriated to defray the expenses of the administration of Justice and of His Majesty's Civil Government in this Province, and directed by an Act passed in the British Parliament long before the establishment of the present Constitution in this Province, to be so applied, under the authority of the Lords Commissioners of His Majesty's Treasury; this claim, made by one, has been formally denied by the other two Branches of the Provincial Parliament; nevertheless it has been persisted in, and recourse has been had to the unusual proceeding of withholding the Supplies, except upon conditions which would amount to an acknowledgement of its constitutional validity.

This subject has occupied every Session from the first to the last, and is now transmitted to those which shall follow: It has caused incalculable mischief to the Province; and now leaves it to struggle under difficulties, while every Inhabitant of it must see that the encouraging aid of the Legislature is alone wanting to arouse powerful exertion and draw forth those resources which without that aid must in a great measure lie dormant and useless within its reach. But, Gentlemen, I see with infinite satisfaction, that notwithstanding these unfavorable circumstances, *Canada* is powerfully advancing in improvement, and that the differences which continue to disturb its

[1] *Journals of Assembly, Lower Canada, 1823-24, pp. 360-361.*

Legislature, have not interrupted in the smallest degree that general contentment which the people enjoy under the paternal care and protection of His Majesty.

In former years, when the Supplies necessary for the support of His Majesty's Government and the honor of His Crown in this Province, were not granted, I averted the unhappy consequences which must have resulted from a strict adherence to the letter of the Law, and I trust that my conduct on these occasions will be justified and approved, where a lone I am responsible: But as my advice has been unavailing to prevent this result at the present period, I shall interfere no further; adhering now to the letter of the Law, I shall guide the measures of the Executive Government by that rule, and according to my best judgment, lamenting that the Public must feel those consequences which have so long impended over it, and which I can no longer avert.

Gentlemen of the Legislative Council,

I feel myself called upon to acknowledge the calm, firm and dignified character of your deliberations and conduct in the discussion of the Public Business, and I take it upon me, in a sense of duty, to thank you in His Majesty's Name, for the support you have uniformly given to the measures I have from time to time recommended to you for the good of the Province.

I fervently pray that the wisdom of your proceedings may make a just impression upon the loyal Inhabitants of the Province, and lead them to that temperate and conciliating disposition which is always best calculated to give energy to public spirit, to promote public harmony, and ensure public happiness; these are the great advantages which result from a wise exercise of the powers and privileges of Parliament.

After which the Honorable Speaker of the Legislative Council said:

Gentlemen of the Legislative Council, and
Gentlemen of the House of Assembly.

Parliament prorogued.

It is the Will and Pleasure of His Excellency the Governor in Chief, that this Provincial Parliament be prorogued until Saturday the first day of May next; and this Provincial Parliament is accordingly prorogued until Saturday the first day of May next.

ADDRESS TO DALHOUSIE FROM MONTREAL, 1824.[1]

To His Excellency George Earl of Dalhousie, Knight Grand Cross of the Most Honorable Military Order of the Bath Captain General & Governor in Chief in & over the Province of Lower Canada; Vice Admiral of the same; &c &c &c &c

We the Subscribers, His Majesty's dutiful & loyal subjects, Inhabitants of the City & District of Montreal, in the Province of Lower Canada, beg leave most respectfully to approach your Excellency upon the occasion of the late prorogation of the Provincial Assembly.

The course of previous measures, long & systematically pursued by our Provincial House of Assembly, as well in regard to the financial as other momentous questions, had often been such as to produce in us feelings of deep & painful solicitude. To the experience of immediate inconveniences were added more gloomy forebodings of future evils.

We have seen the Revenue of our sister Province of Upper Canada unjustly withheld until it became necessary to re-establish her rights by the interposition of the Imperial Parliament. We have seen a system of temporary laws continually expiring or requiring constant renewal, almost universally substituted in the stead of permanent legislation; as if to reduce all things, to which other countries have deemed it necessary to give stability, into precarious dependence upon the will of an elective body, which has for years been attempting to usurp the powers of the Executive, & encroach upon the Prerogatives of the Crown. We have seen the right of having Representatives in our Legislature, which is at present confined to the French Seignories, refused to the English portion of Lower Canada, namely, the Townships, unless upon terms which would have rendered its accordance a delusion & a mockery. We have seen Offices of Registry, such as exist in all English Colonies, & are indispensable to the security of titles to property in the English portion of the Province, refused to the reiterated prayers of its Inhabitants, notwithstanding the recommendation of the Government in its favour, under this pretext amongst others, that such Registries are incompatible with French & feudal laws, & this notwithstanding the beneficence of the Imperial Parliament, which has enacted that these French laws shall not operate upon lands under English Tenures. We have even seen measures adopted by the House of Assembly to obtain the repeal of this beneficent Act of the Imperial Parliament, whereby the unrepresented English Inhabitants of the Townships would be placed in a still more calamitous situation than at present, & we cannot but perceive that the scope & tendency of the course pursued by the Assembly of Lower Canada, must render this extensive Province, chiefly waste & unsettled at present, unfit for the object which the Mother Country must have most at heart, namely, that it should afford the means of advantageous settlement to British Emigrants & constitute an Asylum & a home for her surplus population.

But although we had observed with melancholy presentiments the tendency of the course adopted, which, from the defective state of our representation, derived only from the Seignories, was unalterable, except by the interposition

[1]*Lower Canada Sundries, S. 168, folio 1.*

of the Parent Country (such as occurred to repress the injustice attempted towards Upper Canada) we were nevertheless not prepared for so sudden an exhibition of the spirit of domination, so haughty a disregard of the Prerogatives of the Crown, & so wanton a violation of the Constitution under which alone they exist, as has been manifested by the Assembly, immediately before the recent prorogation.

We feel deeply that it has been to the power & prerogatives of the Crown that, under Providence, we must chiefly ascribe the preservation of those characteristics by which this Province can be distinguished as an English Colony. We feel that these prerogatives & this power necessary to good government throughout the British dominions, must be to us in this Province more essential, as constituting our chief refuge in danger, our strong tower of defence against feudal ascendancy, & our sole reliance against anarchy & confusion.

For your Excellencys measures & determination to uphold those just & necessary prerogatives in their due & legal efficiency, we beg leave gratefully to express our heartfelt thanks. We cannot doubt that these measures will meet the decided approbation of our beloved & most gracious Sovereign, to whom & to the Parent Country, we can alone look, under Providence, for the future establishment of a state of things such as may render this Province, a secure & desirable asylum for our fellow subjects from Britain.

While we thus gratefully acknowledge your Excellency's sense of duty, in supporting the most essential Prerogatives of the Crown & your unabated zeal for the welfare & improvement of the Country, amidst unhappy divisions, calculated to paralyze your laudable efforts, & while we also recollect the blessings experienced by the sister province of Nova Scotia under your administration, we cherish the hope that the recent proceedings of the House of Assembly may induce His Majestie's [sic] Government to take our situation into their serious consideration, with the view of speedily repairing the defects & correcting the errors which past experience & the recent assumptions of the Assembly have tended to expose– And we also fervently cherish the hope that the firmness & energy which have marked Your Lordship's conduct on this & other important occasions, will not be relaxed in the present arduous circumstances of your administration, which we trust will be long, & distinguished by obtaining an effectual remedy to our grievences. Amidst these hopes, derived from your character & conduct, we feel assured that your Excellency will experience the noblest of all rewards, not only in the approbation of our gracious & beloved Sovereign, but in the consciousness of having discharged the duties of your exalted station, for the welfare & prosperity of His Majesty's faithful subjects.

APPROPRIATION OF PUBLIC MONEY.

Extract from a Report of Council, Lower Canada, 14 May, 1824.[1]

Upon the 4th Question

" what shall be done as to Salaries and Contingent Charges for which " no appropriation has been made? "

The Committee adverting to Your Excellency's Speech from the Throne at the close of the last Session of the Provincial Legislature cannot recommend

[1] *Lower Canada, State Book K. pp. 44-47.*

that any warrant should issue for any Salary or Contingent Charge contained in the Estimate N° 2. and for which no appropriation has been made by the Provincial Legislature, unless His Majesty having taken into His Royal Consideration the Critical Circumstances in which the Province is placed by the refusal of the Assembly to provide for the payment of the Said Salaries and Contingent Charges, shall be graciously pleased to direct that warrants for the payment of such Salaries and Contingent Charges Shall issue, and to point out the fund from which they shall be discharged.–

Upon the 5th Question.

" If there should be a deficit in the permanent fund, from whence is " the amount of that deficit to be taken "?–

That the deficit of the permanent fund (if there be any) should be made good, subject to the King's pleasure, by Monies taken from the Military Chest, or from some other fund at the disposal of the crown from which the Instructions of His Excellency the Governor in Chief will allow it to be taken if such there be.

Upon the Sixth Question

" What Course shall be adopted to relieve the public Treasury from " immediate pressure?—

That to relieve the public Treasury from immediate pressure all Warrants which may be issued out by Your Excellency's Order should be withheld from the parties, and retained in the hands of the clerk of the Executive Council until there are funds at the disposal of the crown and sufficient for their discharge in the hands of the Receiver General.

Upon the Seventh Question:

" From what monies shall the Sums given by the Provincial Statutes " passed in the session before the last be taken, and against what fund " shall they be charged?"

That the Sums granted by the provincial Statutes passed in the Session before the last should be paid from any unappropriated monies collected under and by Virtue of any provincial Statutes whose proceeds have not by Law been directed to be applied to other purposes and that their amount be charged accordingly and against the Local Fund.

Upon the Eighth Question:

" From what monies shall the Sums given by the provincial Statutes " of the last Session be taken?—

That all sums granted by any provincial Statutes of the last Session should in like manner be paid from the unappropriated monies described in the last answer, and be charged accordingly against the local Funds.

Upon the Ninth Question:

" From what monies shall the sums required for the support of pris- " oners and the payment of Witnesses in Criminal Cases be taken, and " against what fund shall they be charged "?—

That the sums required for the support of the Prisoners in the several Gaols of the Province, and for the payment of Witnesses in Criminal Cases should be advanced by the Crown, and the amount Charged against the local

Fund as a Loan to that fund, if the amount of Fines and forfeitures received should not be sufficient for the payment of such witnesses in Criminal Cases.—

The Committee Considering the general Scope of Your Excellency's Reference, conceive that they may here be permitted to suggest that the Expence of Collecting the Revenue is a Charge upon the Revenue, and must necessarily be paid in the usual Manner.—

All which nevertheless is respectfully Submitted to Your Excellency's Wisdom.

By Order

(Signed) FRANCIS BURTON
Chairman

Council Chambers
14th May 1824.

Remark by Lord Dalhousie.

"In Confirming this Report of the Council on the existing difficulties in "the payment of the various demands for the Year Current, and arrears of the "past, I approve the advice given in the answer to the fourth Question with "this Modification, that, conceiving the Contingencies of all offices established "in the General Government of this Province to be absolutely necessary to the "performance of the Duties of each, I think myself obliged by His Majesty's "Commission, as well as by fair justice to the acting officer's to cause payment "to be made by warrant for all necessary Contingencies, and that these should "be charged against the local Fund as a Loan.

(Signed) D.

PROVINCIAL AGENT.

Resolution of Assembly, Lower Canada, 4 March, 1824.[1]

Resolve of thanks to Sir James Mackintosh

Resolved, Nemine contradicente, That the thanks of this House be given to Sir *James Mackintosh,* and the other Members of Parliament, who, influenced by a sense of justice and their attachment to the principles of the British Constitution, succeeded in persuading His Majesty's Ministers to relinquish their support of a Bill introduced in the House of Commons in One thousand eight hundred and twenty two, for altering the established Constitution of the *Canadas,* until such time as the Inhabitants of the Provinces could have an opportunity of making known their sentiments thereon.

Resolved, That the preceding and present Resolutions, signed by Mr. Speaker, be transmitted by him to Sir *James Mackintosh;* requesting him to communicate the same to the other Members of Parliament who seconded his generous efforts on the aforementioned occasion; and also seeing the obstacles which have for the last seventeen years prevented the Legislature of this Province from obtaining an authorized Agent in *England,* to watch over the interests of this Province, requesting Sir *James* to continue as a Member of Parliament, those services which have rendered his name so justly dear to the Inhabitants of both Provinces.

[1] *Journals of Assembly, Lower Canada, 1823-24, p. 344.*

TRADE AND NAVIGATION LAWS.

Opinion of Law Officers, Lower Canada, 1 June, 1824[1].

The Canada Trade Act, an Act of the Imperial Parliament 3 Geo: 4. Cap. 119. enacts "that from and after the passing of this Act it shall be Lawful to import by Land or inland Navigation in any British or American Vessel or Vessels, Boat or Boats, Carriage or Carriages, the Goods Wares and Commodities, the growth, produce or Manufacture of the United States of America enumerated in the Schedule or Table annexed to this Act Marked (A) from any port or Place in the United States of America, into any Port or place of Entry at which a Custom House now is or hereafter may be Lawfuly established in either of the Provinces of Upper and Lower Canada."

Before this Act was passed a difference of opinion had existed in the Colony as to the admissibility of American Vessels into the Ports upon the Lakes in opposition to the Navigation Code maintaining the principle that no Goods or Commodities whatsoever could be brought into or out of the Colony but in a British built Ship or in one the build of the Colony navigated by a Master & three fourths of the Crew British Subjects.

This Act put at rest that question for the articles enumerated in the Schedule of it, and admits American Vessels at the Ports of Entry in the inland Navigation.–

The free port Act, an Act of the Imperial Parliament 3. Geo: 4. C. 4[2] opens the Port of Quebec for the same Articles, the Schedules of both Acts are alike, therefore the Ports of Entry on the Frontier & the Port of Quebec are open to American Vessels to bring Certain Articles, and probably the intention of the Legislature was to open them generally as the Schedules are comprehensive.

With respect to the inland Navigation the question is still open as respects articles not enumerated in the Canada Trade Act 3 Geo: 4. Cap. 119 & it may be matter of question whether American Vessels can at present be allowed to bring Articles not enumerated in the Schedule. Those who have been of opinion in the Colony that the Navigation Laws were in force upon the Great Lakes will necessarily confine the American Vessels to the Articles of the Schedule–. It is to be remarked that the admission of American Vessels into the ports on the Lakes has not commenced with the late Act 3 Geo: 4. C. 119. They have always been admitted in Upper Canada & at the Port of Saint John's on Lake Champlain. At the latter port the Trade is carried on altogether by American Vessels, so much so that in the War of 1812, Pilots could not be found for that Lake, and it is evident one seaman formed on the Lake, must be more valuable than anything that can be brought to it.

The inland Navigation has heretofore been regulated by Colonial Temporary Acts, Orders in Council & proclamations none of which have ever described the description of Vessel to be admitted, or fixed the point whether the navigation Laws were in force on the Lakes.

The 3. Geo: 4. C. 119 is the first Imperial Act on the Subject but does not include all the Articles allowed to come from the United States by the

[1]*Lower Canada Sundries, S. 170, No. 101.*
[2]Really Cap. 44. See above *pp. 98-101.*

Colonial Acts. The Colonial Act 59 Geo: 3. C. 4. An Act to regulate the inland Trade of this Colony with the United States admitts some articles not enumerated in the British Act, none differing materially in description from the Articles admitted by the Imperial Act, but that of Salted Provisions.– The British Act allows the Neat Cattle and Hogs to be brought by inland Navigation, but is silent as to manufactured provisions. The Colonial Acts allow the importation into this Colony from the United States of America, of manufactured provisions to wit "Salted Beef or Pork & provisions of all descriptions" which at once gives to the Americans free of duty all the markets heretofore preserved for the provision Trade of the Mother Country.

It is to be remarked that the Imperial Act, the Canada Trade Act 3. G. 4. C. 119 upon all that which is admitted by inland Navigation imposes a duty, an ad valorem duty, of ten per Cent on Neat Cattle & all live Stock. The Colonial Act imposes an ad valorem duty of 5 per cent on Leather, & a duty on Snuff & Tobacco but none on Salted provisions. The Export of that Article from Lower Canada is increasing rapidly. It comes from the United States without duty and goes to the West Indies where of course it will undersell the Salted provisions of the Mother Country. The British Act opening the Trade of this Colony with the United States imposes a duty upon Flour, all articles of Agricultural produce and Lumber so that they have no advantage over articles of this description when they meet them from the Colony or Mother Country in the West Indies and it is to be observed that Articles of this description are not exported in any quantity from Europe to the West Indies, but the West Indies will shortly be supplied with American Beef & Pork, Salted in their own Country, brought here free of duty to the prejudice of the Agricultural Interests and Provision Trade of the Mother Country. In this partcular the Colony has protected itself. It is provided by 59 Geo: 3. C. 4. S. 6. that the Governor can by Proclamation direct that no "Flour or Salted Beef or Pork or Salted provisions imported into this province from the United States shall be allowed to pass any of the Ports of Entry unless a Bond shall be entered into by the Owner or importer thereof with two Sufficient Sureties in double the value of the article, that the same & every part thereof shall be exported from the Province and that no part thereof shall be consumed therein which Bond shall not be discharged until a Certificate is produced from the Collector at Quebec, that the Article upon which such Bond had been given had been duly Shipped for exportation from the Province. Thus the Colony has protected its Agricultural interests, and the Imperial Parliament would no doubt have done the Same by the 3 Geo: 4. C. 119 had it been aware that Salted Beef and Pork and provisions of all descriptions could be imported into Canada from the United States, and go from it free of duty as the produce of the Colony. Upon the present question whether Sloops & Steam Boats when laden with Articles admissible into the Province by the Colonial Act– 59 Geo: 3. C. 4. are to be allowed an Entry, We think not, because We are of opinion that the Navigation Acts are in force on the Lakes. The Imperial Parliament has considered it so, because it partially opens the Ports by 3 Geo: 4: Cap: 119. and We think American Vessels are at present admissible for the Articles only included in the Schedule of that Act, at the same time it is to be observed

that a change has been made of late in the principle heretofore so rigidly supported that nothing was to come into or out of the Colony but in a British built Ship, or One of the Colony.– The free port Act 3. Geo: 4. Cap. 44 and the Canada Trade Act open the Ports for the Articles on their Schedules, but the Framers of the latter Act have not known that other Articles are imported by the Colonial Acts from the United States free of Duty particularly the Salted provisions. It is to be observed by the Schedule of the 3. Geo: 4. C. 119 that Hogs & Neat Cattle from the States pay a duty and the Merchants here can afford to salt them for the West Indies; therefore when they can come in Salted free of Duty & be exported free of Duty they Must undersell the same Article from Europe when they meet in the West Indies.–

We are therefore of opinion this Case ought to be referred by the Custom House to the Commissioners of the Customs in order that the pleasure of the Lords of The Treasury may be known on the subject. If the Navigation Laws are in force on the Great Lakes of these Provinces as we consider them to be, & the principle is to be maintained that nothing can come in or go out of the Colony but in a British or Colonial Built Ship; it will be necessary to extend the provisions of the 3 Geo: 4. C. 119 to all the Articles admissible by the Colonial Acts, at the Same time imposing a countervailing duty on the Salted Provisions & other articles not enumerated in the Schedule of the 3 Geo: 4 C. 119, but at present imported under the Colonial Acts. We consider the Ports on the Frontier open to American Vessels for the Articles only enumerated, in the Schedule of the 3 Geo. 4. C. 119 at the same time other Articles are admissible in Boats or by Land Carriage by the Colonial Acts, free of duty, which We think is contrary to the meaning of the Canada Trade Act which will require to be amended. Until this can be done We should advise that instructions be given to the Officers at the different Ports on the Frontier to allow the Trade to go on as it has done under the Colonial Regulations.–[2]

(Signed) NORMAN FITZ Gd UNIACKE
Attry. Genl.

G. VANFELSON
Adv. Genl.

QUEBEC 1st June 1824–

[2]By Order in Council, of 27 July, 1826, it was ordered that:—"it was and should be lawful for the ships of the United States aforesaid to import into any of the British possessions abroad, from the said United States, goods, the produce of the United States aforesaid, and not enumerated in the table of prohibitions and restrictions in the said Act contained, and to export goods from such British possessions abroad to be carried to any foreign country whatever; provided always, that such goods so imported should be subject and liable to the payment of the duties imposed and made payable under and by virtue of the said Act of Parliament." See *below p. 389.*

80423—15½

MEMORANDUM ON SEIGNIORIAL TENURE, 1824.[1]

Mem. respecting the Letter of E. Ellice, Esq^r^ to R. W. Horton, Esquire, of 19^th^ Sept^r^ 1824.

It must be admitted on all hands that the 31^st^ Clause of the Canada Trade Act (3 Geo. IV. c. 119) by which it was intended to operate a change of the old French Tenures in Canada, is imperfect, & insufficient for effectuating the purpose in view. M^r^. Ellice has been very unwilling to admit this insufficiency, as his former Communications on this subject, & particularly his Letter of the 15^th^ Aug. 1823, evinced; but he is now, it is presumed, sufficiently aware of it. The Clause referred to provides for a commutation between the Crown & the Seigniors, but has omitted altogether, to provide for a commutation between the Seigniors and their *Censitaires*, who hold their lands in fee simple under their respective Seigniors, & are proprietors of the greatest part of the inhabited soil of Lower Canada, it is upon these *Censitaires* that the feudal burthens intended to be removed by the Clause in question press injuriously, by discouraging industry and improvement. Unless a Commutation of these burthens, in favour of the *Censitaires*, be effected, the measure contemplated is without practical utility=a benefit is indeed conferred on the Seignior personally, by releasing him from the mutation fine which he owes to the Crown, but nothing more is accomplished=the proprietor of the soil continues to labour under the same disadvantages as before the passing of the Act, unless his Seignior may choose to relieve him from them, by consenting to a commutation. This being the present state of things, the only question is, in what way can it be remedied, or, in other words, how is the defect in the above mentioned clause to be supplied– It is obvious that if a Seignior applies to the Crown for a Commutation of the feudal rights to which he is liable in respect of the Crown, he virtually consents to a similar commutation of the feudal rights to which his *Censitaires* are liable in respect of him– Of this M^r^ Ellice seems to be sensible, as he takes it for granted that it would be a necessary condition of a release to be granted on the part of the Crown to a Seignior that he should grant such commutation in favour of his *Censitaire*. But M^r^ Ellice is under an impression that the authority of the Crown, without any legislative Enactment is fully competent to secure to the Censitaires this right in its most beneficial extent, & therefore treats with some levity the idea of recuring to the British or Colonial Legislature for any further provision– It is in this particular that M^r^ Ellice labours under misapprehension.– The Crown might, indeed, make it a condition of a commutation with a Seignior, that he should grant a commutation to his *Censitaire*, & in default of his doing so, that the Commutation with the Crown, should become null– But this would be a mere matter of contract between the Crown & the Seignior, to which the *Censitaire* would necessarily be a stranger, & under which he could not derive a right to enforce his Claim to a Commutation, by legal proceedings in his own person. The Seignior would not want specious reasons to excuse or palliate his refusal to grant a Commutation, when required by his *Censitaire*, & it would be quite impossible for the Crown to make itself the Judge in each particular case between the Seignior & his *Censitaire*,

[1] *Q. 170, pp. 585-591.*

the latter requiring & the former refusing a Commutation– In practice, the Condition would become almost wholly nugatory, & it would turn out that the Seigniors only had been benefited– To ensure, therefore, to the *Censitaire* the same right of Commutation with his Seignior, which the latter, it is intended, should have in respect of the Crown (a right which M^r^ Ellice admits the *Censitaire* must and ought to have) it would evidently be necessary, by a legislative enactment, to declare that where a Seignior obtains from the Crown a Commutation of the rights due by him to it, he shall be held to commute with his *Censitaire.* Under such a provision, the Censitaire would be enabled to obtain, by direct proceedings in his own name against the Seignior, that Commutation which, it is admitted, he would become entitled to as a consequence of a Commutation between the Crown & his Seignior. A legislative Act of this nature may proceed either from the Parliament of Great Britain, or from the Colonial Legislature– Considering that the *people* of Lower Canada, nine tenths of whom are *Censitaires,* are most essentially interested in the passing of such an Act, inasmuch as without it they would, with respect to any Commutation in their favour, be in a great measure at the mercy of the Seigniors who might obtain Commutations from the Crown, I took the liberty of suggesting the expediency of bringing a Bill into the Colonial Legislature for the object in question, & prepared such a Bill.– The only objection which I understood M^r^ Ellice to have to this Bill was in respect of the proportion of the value of an Estate held by a *Censitaire* of his Seignior, to be paid as the price or consideration of a Commutation– For this, as being one of the details of the Bill, necessarily subject to some difference of opinion, & properly to be filled up in a Committee of the whole House, I left a Blank in the Draft, but inserted within a parenthesis, in figures, 1/6^th^ intending to refer to that as a proportion which had been adopted in France in cases analogous to the proposed Commutations– This proportion M^r^ E. thinks ought not to be invariably fixed.– Upon this point the discretion of the Legislature must necessarily be consulted– Composed as the Legislature of Lower Canada *now* is, and with the prejudices which the Rank Canadian Members entertain, would not give any assurance that this Bill, though of the most evident expediency for the interest of the People of Lower Canada would be passed– But whatever may be the result it appears to me that the Executive Government, before attempting the execution of the measure, under an Enactment which is acknowledged to be imperfect and insufficient, ought in prudence and justice to give the Legislature of the Country to be affected by it, an opportunity of supplying the defect, unless it should be deemed more expedient to effect the same purpose by a short Bill (& a very short one must suffice) to be brought into the Imperial Parliament to amend the Cause in question.– I am personally, I beg leave to state, most sincerely anxious for the accomplishment of the measure which His Majesty's Government has in view, of the wisdom of which no doubt can be entertained; & though I have not the good fortune to agree with M^r^ Ellice in all particulars as to the means, I am not less solicitous about the end to be attained, I should be very unwilling to be thought to share the opinions of the persons whom he designates as the " Wise Men of the West," on this subject.– As M^r^ Ellice has written his letter under an impression that no further legislative Enactment is

necessary, or could be of use, in giving effect to the clause in question, it would seem to be a sufficient answer to his observations, all of which are predicated on this Supposition to relieve him from this misapprehension– The Error in which he has been on this point being removed, it would then only become a question, Whether the Bill proposed be a fit one, or whether it should undergo modifications– So far as I am personally concerned, I should be happy to adopt any reasonable alterations that can be suggested, & modify the Bill accordingly—

Endorsed—
Mem: respecting the Letter of E. Ellice Esqr of 19 Sept-1824–

J. STUART

London,
2d Oct– 1824–

APPOINTMENT OF ADMINISTRATORS.

Bathurst to Maitland.[1]

Downing Street
11th October. 1824.

Sir,

Having laid before His Majesty your Dispatch N° 147 dated on the 24th of July last,[2] I have received His Commands to issue the following instructions for your guidance on the Subject to which you have there directed my attention–

Whenever you may be called, in the execution of Your Military Duties to visit the Province of Lower Canada during Lord Dalhousies absence you will consider whether there is sufficient reason to anticipate that your absence from Upper Canada will be productive of any considerable inconvenience or delay in the dispatch of the public Business of that Province– If you see adequate cause for supposing that such Mischiefs will follow, you will, before your departure, delegate the intermediate Administration of your Government to the proper Officer, in the manner prescribed by the Instructions under which you at present Act– If on the contrary it should appear to you that, during

[1] *G. 60, pp. 299-305.* This despatch was laid before the Executive Council of Upper Canada, 22 December 1824, and ordered to be filed. See *State Book G. pp. 459-462.*

[2] The occasion for this despatch rose from the fact that as the command of the troops devolved upon Maitland in the absence of Lord Dalhousie, he had found it necessary to pay a visit to Quebec. During his absence the Executive Council refused to transact business as a Land Board, and considerable inconvenience had resulted. Maitland was particularly annoyed, for, as he pointed out: "The circumstance of the Lieutenant Governor being for a few days absent from the Province having frequently occurred without any suspension of the public business, except such as requires his signature, or the actual affixing of the Great Seal, I was not prepared to anticipate the inconvenience which took place, more especially after the very attentive consideration the question appears to have undergone upon the assumption of this Government by Lieutenant General Hunter, then commanding the troops in the Canadas, when a course was not merely concurred in but recommended by the Executive Council, and confirmed by the sanction of His Majesty's Government, which admitted of all the ordinary functions of the Council, as a Land Board being proceeded in during the temporary absence of The Lieutenant Governor." *Q. 336, p. 17.* See also *Doughty and McArthur, Constitutional Documents pp. 236-240.*

your absence, no exigency is likely to arise in which the presence of an Officer entrusted with the temporary administration of the Government would be necessary, you will, in that event, abstain from delegating your duties to any Such Officer– To a considerable extent therefore His Majesty confides to your own discretion the decision of this question upon each successive emergency as it arises,– You will understand however, that if you should have occasion to visit any Province or Country except Lower Canada, or if your absence in Lower Canada should have any object except your necessary attendance, on your military duties, or should exceed one month, you will appoint a temporary Administrator before you quit the Government which His Majesty has confided to you–

I have it further in command from His Majesty to direct that you Communicate my present dispatch to the Executive Council, & apprize them, that it is His Majesty's pleasure that, during any temporary absence of the Lieutenant Gov^{r} in Lower Canada, during which, in the exercise of his discretion, he may not have thought fit to delegate the execution of his office to an Administrator of the Government, they are to proceed with the execution of their duties in all the ordinary details of public business, reserving until the return of the Lieutenant Governor the decision of such questions as may require his special attention, and the completion of all such Acts as require his formal and official Sanction–

I am
Sir,
Your humble Servant,

BATHURST

M. Gen^{l}
Sir Peregrine Maitland
K. C. B.
&ca– &c. &c.

Endorsed—

Downing Street
11 October 1824

From Earl Bathurst—Instructions for the guidance of the L^{t} Governor on occasion of his absence at any time from the Province.

APPEALS TO COLONIAL SECRETARY.

Bathurst to Maitland.[1]

Downing Street
30th October:- 1824

Sir,

In consequence of a Communication which I have received from the Secretary of State for the Home Department complaining of the great practical inconvenience which has been found to result from the frequent reference of late years in criminal cases, from the Colonies to this Country, with regard to the confirmation of Sentences pronounced by the Colonial Courts, I have to give you the most particular directions to avoid any recurrence to this Practice except in cases of most serious doubt, wherein in your judgement, no Alternative remains, but to appeal to the Government at home– A reference home except on a doubt with respect to the construction of Law,– must necessarily so raise the hopes of the unfortunate Convict that it becomes hardly possible to direct the execution of the Sentence of Death, after the long interval which must elapse, between the time when the reference is made, and that at which the answer will arrive, & thereby does in effect leave His Majesty's Government no other Alternative, than what under other circumstances would be considered, a lax execution of the Law–

I have the honor to be
Sir,
Your obedient,
humble Servant

BATHURST

Maj. General
Sir Peregrine Maitland. K.C.B.
&c. &c. &c.

Downing Street
30 Oct. 1824

Endorsed:
From Earl Bathurst

No reference to be made to His Majesty's Governmt in the case of any Convict under sentence of Death unless under most particular Circumstances of doubt &c.

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[1] *G. 60, pp. 306-309.*

CONTROL OVER REVENUES, LOWER CANADA.

Opinion of Law Officers.[1]

Serjeants Inn
13 November 1824.

My Lord,

We have had the honor to receive Your Lordships Letter transmitting to Us the Copy of a Letter from Lieutenant General the Earl of Dalhousie dated the 28 April 1823 enclosing a Report made by a Committee of the Assembly of Lower Canada, upon the Provincial Accounts in which a question is raised as to the right of Government to apply the proceeds of the Revenue arising from the 14 Geo. 3 C. 88. as they invariably have been since the passing of that Act towards defraying the expences of the Administration of Justice and the support of the Civil Government by the Authority of His Majesty without the intervention of the Colonial Legislature; And your Lordship was pleased to desire that We would take the same into Our Consideration and Report to your Lordship for the information of His Majesty whether the power granted by the Act of the 14th Geo. 3rd is repealed by the declaratory Act of the 18 G. 3 or by the Act of the 31 G 3 granting a Constitution to the provinces of Lower and Upper Canada so as to take from the Crown the Appropriation of the Money levied under the 14th Geo. 3 and to vest it in the provincial Legislature–

In compliance with your Lordships request We have taken the same into Our consideration and beg leave to Report for the information of His Majesty that By the 14 Geo. 3 C 88 the duties thereby imposed are substituted for the duties which existed at the time of the surrender of the Province to His Majesty's Arms and are Specially appropriated by Parliament to defraying the expences of the Administration of Justice and of the support of Civil Government in the Province– This Act is not repealed by the 18th Geo. 3 C. 12, the preamble of which declares that Parliament *will* not impose any duty &c for the purpose of raising a revenue, and the enacting part of which states *that from and after the passing of this Act* the King and Parliament of Great Britain *will* not impose &c. except only &c– The whole of which is prospective and does not as we think affect the provisions of the Act of 14 G 3 C 88– It may be further observed that if the 18 G 3d had repealed the 14 Geo. 3d. the Duties imposed by the latter Act must immediately have ceased and the Act 18 Geo 3d cannot affect the appropriation of the duties imposed by the 14 Geo. 3 since the 18 G 3d is confined to duties *thereafter* to be imposed and imposed also for purposes different from those which were contemplated by the Legislature in passing the 14 Geo. 3d Vizt the regulation of Commerce alone.

We are further of opinion that the Act 14 G. 3 C. 88, is not repealed or affected by the 31 G 3 C 31– It is clear that it is not repealed;– In fact as we observed with respect to the 18 G 3 if the Act had been repealed the duties must immediately have ceased: And as to the appropriation of the duties or the controul over them nothing is said upon the Subject either in the 46 & 47 Sects or in any other part of the Act 31 Geo. 3 C 31.

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[1] *Q. 169, pp. 87-90.*

With respect to any inference to be drawn from what may have taken place in Canada within the last few years as to these duties it may be observed that the duties having been imposed by Parliament at a time when it was competent to Parliament to impose them they cannot be repealed or the appropriation of them in any degree varied except by the same authority–

We have the honor to be
My Lord
Your Lordships Most Obedient
Humble Servant

J. S. COPLEY
CHS WETHERELL

To Earl Bathurst
&c &c &c

OPINION OF BRITISH LAW OFFICERS ON BIDWELL'S CASE, 1824.[1]

Serjeants Inn.
13 November 1824.

My Lord,

We have had the honor to receive Your Lordship's letter transmitting to us several documents relative to the case of Mr Barnabas Bidwell a citizen of the United States who had been returned as a Member of the House of Assembly of the Province of Upper Canada; and Your Lordship was pleased to desire that we would take the same into our consideration and report to Your Lordship our opinion whether Mr Bidwell has any right to sit as a representative in the Assembly of Upper Canada under the 31 Geo: 3 Cap 31 or under any other Act of Parliament referred to in the accompanying case, and in the event of our considering that Mr Bidwell has no claim to a Seat in the Legislative Assembly – Your Lordship was also pleased to desire that we would inform Your Lordship whether we consider Mr Bidwell's Son who was born in the United States of America since the peace of 1783 as also ineligible.

In compliance with Your Lordship's request we beg leave to report that we are of opinion that Mr Bidwell has no right to sit as a representative in the Assembly of Upper Canada, under the 31 Geo: 3rd Chap. 31 or under any other act, and we are further of opinion that Mr Bidwell's Son is also ineligible – We have considered the general question to be of very great importance and as it has been for some time depending in the King's Bench we were desirous of waiting the decision of that Court before we gave our Opinion upon it.[2] The judgment has been lately pronounced and after very elaborate argument it has been decided that a person in the situation of Mr Bidwell is

[1] *Q. 337, pp. 45-47.*
[2] Case of *Thomas vs Acklam.*

not a natural born Subject of His Majesty but an Alien and that the Son of such a person born in the United States after the treaty of 1783 is also an alien.

This question therefore which has been so long and so frequently agitated may at length be considered as finally determined.

We have the honor to be,
My Lord,
Your Lordship's
Most Ob^{t} Humble Serv^{ts}

J. S. COPLEY.
CH^{s} WETHERELL.

The Right Hon^{ble}
EARL BATHURST.
&c. &c. &c.

RELATION OF CIVIL AND MILITARY AUTHORITIES.

BATHURST TO DALHOUSIE.[1]

Circular

DOWNING STREET
29th November, 1824

MY LORD,

The King having taken into his consideration the necessity of laying down some definite Regulations by which the Governors or Officers administering the Government of His Colonies and Settlements abroad, and the Officers in command of His Military Forces in those Colonies and Settlements, may the more clearly understand their relative duties and authority, I have received His Majesty's commands to communicate to Your Lordship for the guidance of Yourself and Your Successors in the Government of the Province of Lower Canada the following Instructions.

1st. Whenever it may seem fit to His Majesty to intrust the Civil Government of the Province of Lower Canada to an Officer holding a Commission in His Majesty's Land Forces of the rank of Colonel or of any superior rank and whenever in pursuance of His Majesty's standing instructions the Civil Government may devolve upon any such Officer, he will consider himself as invested by virtue of that appointment with the Military authority and command over His Majesty's Forces within the Province unless His Majesty should specially appoint some other Military Officer of Higher Rank, or of the same rank, but bearing a Commission of earlier date to take command of those Forces –

[1]*G. 13, pp. 168-178.*

2d. But when His Majesty shall see fit to confide the Civil Government of the Province to a person who does not hold any Commission in His Land Forces or who holds a Commission of inferior rank to that of a Colonel, and whenever in pursuance of His Majesty's standing instructions the Civil Government may devolve upon any such person the following rules are to be observed for preventing any conflict of authority between any such Civil Governor and the Military Officer who may be appointed to the command of His Majesty's Land Forces in the Province.

3d. It will be the duty of any such Civil Governor or person Administering the Civil Government to issue to the Officer having the command of His Majesty's Forces within the Province such Orders respecting the Marching of the Troops or the distribution of them or the making and marching of Detachments and Escorts, or respecting any other Military Service as the safety or welfare of the Province may render necessary.– It will be the duty of the Officer in command of His Majesty's Forces to carry such Orders into execution, and he alone will be responsible to His Majesty for the prompt and efficient performance of any such Service in all its details.

4th. If however the Province should be invaded or assailed by a Foreign Enemy and become the Scene of active Military operations, the power of the Civil Governor or the person administering the Civil Government to issue any such Orders will be suspended & during any such emergency, the Officer in Command of His Majesty's Land Forces will upon his own responsibility and without reference to the Orders of the Civil Governor or person administering the Civil Government act in such manner as he may consider necessary for the defence and Security of the Province.

5th. It will be the duty of the Governor or Person Administering the Civil Government of the Province as representing His Majesty, to give the Word in all places within his Government except only during the continuance of such active Military operations as are noticed in the preceeding paragraph.

6th. The Officer in Command of His Majesty's Land Forces will make to the Governor or person Administering the Civil Government of the Province returns of the State and condition of the Troops under his Command, of the Military Departments and of the Stores Magazines and Fortifications within the Province.

7th. The Officer in command of His Majesty's Forces will consider himself as charged with the single and exclusive superintendance of all details connected with the Military department, with the Regimental duty and discipline of the Troops with the inspections, and with summoning & holding Courts Martial, Garrison, or Regimental –

8th. The sentences of Courts Martial will be carried into execution without the previous sanction of the Civil Governor or person administering the Civil Government, except only in cases where sentence of death may be pronounced; in which cases execution of the sentence will be suspended until the sentence shall have been approved on His Majesty's behalf by such Civil Governor or other Person or Persons administering the Civil Government.–

9th. The Officer in Command of His Majesty's Forces will render to the Civil Governor or person administering the Civil Government of the Province, a duplicate of such returns as he may from time to time make either to the Commander in Chief at Home, or to any Military Officer upon whose more general command his own local Command may be dependant, so far as such returns relate to the detail of the Military Department, the Regimental duty, the discipline of the Troops, the Inspections, or Courts Martial, General Garrison, or Regimental.

10th. The preceding Instructions will form the Rules for Your Lordships guidance upon this subject in the performance of your duties as Civil Governor of His Majesty's Province of Lower Canada–

His Royal Highness the Commander in Chief will issue as occasion may require corresponding Instructions for their guidance to the Military Officers in command of His Majesty's Forces within Your Government –

I have the honor to be,
My Lord,
Your Lordships most obedient
very humble Servant,

BATHURST

To
Lieut. General the Earl of Dalhousie, G.C.B.
&c &c.

Endorsed (Circular)

Earl Bathurst
29th Novr 1824.

Instructions relative to Extent of Authority of Civil Governor, with His Majestys forces, when in the Admn of the Government

INDEPENDENCE OF THE JUDGES.

Memorial of Judges, Lower Canada, November 1824.[1]

To His Excellency, the Honorable Sir Francis Nathaniel Burton Knight Grand Cross of the Royal Guelphic order of Hanover, Lieutenant Governor of the Province of Lower Canada, &c, &c, &c,

May it please Your Excellency,

We, the Chief Justice of the Province of Lower Canada, and the Puisne Justices of His Majesty's Court of King's Bench, for the Districts of Quebec, Montreal, and Three Rivers,

Most respectfully beg permission to call Your Excellencys attention to the consideration of a subject affecting not merely the undersigned as Judges, but, in a political point of view, highly important to the interests of all classes of His Majesty's subjects in this Province, and as connected with the question of an Union of the Canadas, which they understand is likely to be brought under the immediate consideration of His Majesty's Ministers, and eventually of the Imperial Parliament, they avail themselves of the presence of the Governor in Chief, the Earl of Dalhousie in England, whose local knowledge, and sincere desire to promote the best Interests of the Province, coupled with such representations as your Excellency may be pleased to make touching this statement, can not fail of giving energy and effect to it.

And here we beg leave to refer your Excellency to that part of the debate which took place in the House of Lords upon the Canada Bill, on the 30. May 1791. when the views of His Majestys Ministers with regard to the Judges of Canada holding their offices during pleasure or during good behaviour were very pointedly expressed by Earl Grenville, and altho' at that period it was not deemed expedient from the then uncertain state of the Law in Canada, to render the Judges independant in their appointments, as in England, "Yet his Lordship conceived the time was very near when this could be done, so as to be productive of the greatest good."

That, that period has happily arrived in Canada, the Judges having been all regularly bred in the study and practice of the Law, and being as they are, surrounded by a very numerous and enlightened Bar, is here universally admitted: the feelings and the wishes of the Inhabitants of the Province, that the Judges should be commissioned to hold their offices during their good behaviour, and not during pleasure only, have frequently been manifested by their Representatives in Provincial Parliament assembled; a measure which would tend to assimilate still more closely the constitution of this Country to that of the Parent State, upon which it has been modelled; and having in support of it the high authority of our late revered Sovereign in his memorable Declaration to Parliament, " that he looked upon the independance and uprightness of the Judges as essential to the impartial administration of Justice, as one of the best Securities of the rights and liberties of his Subjects, and as most conducive to the honor of the Crown."

We further beg leave humbly to represent, that whatever may age [sic] or infirmities under which a Judge may happen to labour in Canada, where from

[1] *Lower Canada Sundries. S. 173, folio 1.*

the vast extent of Country, its rapidly encreasing population, the peculiar Laws in force, and the almost total want of inferior Jurisdictions, the office of a Judge is one of much difficulty and never ceasing Assiduity, no provision is as yet made by Law or otherwise for the retirement of such infirm or superannuated Judges.

That it is but just and reasonable that public Functionaries, whose time and talents are exclusively devoted to the public Service and who are thereby precluded from the exercise of that Industry which in the common Intercourse of Society might secure a competence, should not when assailed by age or Infirmities, be left, many of them with Families, entirely dependant upon the precarious Bounty of others, or exposed to the painful necessity of retaining an office, to the important duties of which they are no longer competent.

May it therefore please your Excellency favorably to receive those our Representations and to promote by all the means in your power, the humble prayer thereof that the Judicial office in Canada may be so ameliorated, that in future it may be held during good behaviour, and that a Retirement be granted to the Judges after the same Term of Service, and for the like Causes as by Law established for the Judges in England, Scotland and Ireland of three fourths of their Salaries at the period of such Retirement, and to be secured to them out of the proceeds of the Statute passed in the 14th year of the Reign of His late Majesty George III. C. 88, either by an act to be passed in the Imperial Parliament, by Instructions to His Majesty's Representative in this Province, or by such other Course in the premises as may be deemed most Expedient—

Lower Canada
November 1824

Signed)

J. Sewell, Ch. J.
Js Reid, J.B.R.
J. Kerr, J.B.R.
Cl. Perrault, J.B.R.
Edwd. Bowen, J.B.R.
L. C. Foucher, J.B.R.
George Pyke, J.B.R.

Burton to Bathurst.[1]

Castle of St. Lewis
Quebec Decr 9 1824

No 14.

My Lord

I have the honour of forwarding to your Lordship, a Memorial, presented to me by the Chief Justice and Judges of the Courts of Kings Bench for this Province praying that their Commissions may be granted to them during good

[1] *Q. 168, pp. 480-481.*

behaviour & that a provision be made for their retirement after a certain number of years service–

It has been long a favourite object of the Legislature that these officers should be placed on an independent footing, and hold their Commissions in like manner as judges at home, and your Lordship, taking into Consideration the multitude of suits instituted in this Country, by the Crown for Quints lots et ventes and other matters arising out of the Royal Domains, the Public Revenue, and the Lands of the Crown, in all of which, the King is the prosecutor, together, with the circumstance that those judges decide in questions of fact, as well as of Law, may, perhaps be induced to think that were that desire complied with, it might encrease the general Confidence in His Majesty's Provincial Courts, and otherwise be productive of public good, and my own experience induces me to recommend the Petition to Your Lordship's favourable consideration–

I have the honour to be
My Lord,
Your Lordship's most
obedient Humble Servt

FRANCIS BURTON

The Earl Bathurst
K.G.
&c &c &c

PLAN OF GENERAL UNION OF NORTH AMERICA.[1]

Extract from a Paper, entitled, "Memoir on the Means of promoting the joint interests of the Mother Country, and her North American Colonies."

The province of Quebec, which originally comprehended the two Canadas, and the province of Nova Scotia, which in like manner comprehended New Brunswick, having remained firm in their allegiance during the American Rebellion, Upper Canada, at the peace of 1783, was entirely settled by disbanded officers, soldiers and refugees, and many of the same description settled in Nova Scotia and New Brunswick. The settlers which the provinces have received since that period, have been loyalists driven from the States by persecution, or led by attachment to his Majesty's government; emigrants from the Mother Country, principally from Scotland, and American subjects who have settled from interested views, and not from any preference to our government; but the proportion of this description, is comparatively small. The great bulk of the inhabitants of the provinces are therefore royalists, and as such are, in principle, opposed to the government of the United States, and as they are besides nearly exempt from taxes, as their situation is prosperous, and they cannot but duly appreciate the security which their property and commerce derives from the protection of the Mother Country, they have no inducements to become subjects of the United States; the change would not ameliorate their condition.

[1]By Chief Justice Sewell and John B. Robinson. *Q. 164, pp. 323-329.*

It is also to be remarked, that of the entire population of the provinces of Upper and Lower Canada, more than three fifths are inhabitants of Lower Canada, and that in this division of that population, other causes operate to produce the same effects, which certainly are not inferior to those which have already been enumerated.

The entire number of persons of British origin inhabiting Lower Canada, may be estimated, at thirty thousand,* the remainder are Roman Catholics, and descendants from French blood.

From the first establishment to the conquest in 1759, the ancestors of these descendants from French blood, and the Americans, were engaged against each other, in a series of border inroads, pillage, and destruction out of which have grown in the Canadian, feelings which, in contemplation of the injuries which he or his predecessors have suffered, sustain a spirit of revenge against the "Bostoné" as he terms every American and in the contemplation of the successes, gained by his ancestors, excites his emulation, and his vanity; the latter not a little augmented by the success of his efforts for repelling the Americans, in 1775, and in the late war.

The French descended Canadian is, besides, in attachment to his country and to its institutions, equal to the Swiss. He abhors the idea of conquest by the States, because he believes it would lead (as it certainly would) to the abolition of the laws, customs, and religion of his country; which are now secured to him by an act of parliament. He dreads, moreover, the abolition of his language, to which he is, perhaps, equally attached; but he dreads, most especially the abolition of the feudal system which prevails, in Canada, with such ameliorations, that every peasant can obtain from his seignior, or feudal lord, for each of his sons at a proper age, at [sic] lot of land at a rent almost nominal; and can thus provide for the males of his family without difficulty. He feels himself, therefore, personally interested in the defence of the province against the aggressions of the Americans, because he believes (and he is correct in *his belief*) that this system of land-holdings, to which he is so much attached, must fall with the country, if that should fall to the United States.

To these causes must be added the influence of the Roman Catholic Clergy. The United States, it is well known, have no established religion; all sects there are equally protected by law in the enjoyment of their tenets, and the exercise of their ceremonies; and all being left alike to their own support. Tithes are not tolerated, nor does the government contribute by salary, or allowance, to the maintenance of any church. The situation of the Roman Catholic Church, in America, is similar to the others; and the situation of the Roman Catholic Church, in Canada, in case of conquest to the States, would be the same. It would be but one, among many, not entitled to any pre-eminence or advantage, and left to the voluntary support of its own members.

In Canada, on the contrary, the Roman Catholic Church considers itself to be (while Canada shall remain under the dominion of England) an established

*They have since the date of this paper been augmented to 40,000 at least.

Church: and as far as unequivocal toleration assured, by act of parliament, admission of its members to every office of the government (except the highest); tithes secured for the support of their clergy, by act of parliament[1]; a salary to their bishop; and the filling up of every vacancy in the benefices of their church, without interference or participation of any kind,—can constitute an established church, it is so.

It is however, by no means material to inquire, whether this does or does not constitute an established church; the contrast, without this distinction, between what the Roman Catholic Church *is* in Canada, under his Majesty's government, and what it *would* be under the government of the United States, is so great, that its consequences and effects upon the conduct of the priesthood of that church, and of every Roman Catholic layman within the reach of *their* influence, cannot be doubted.

On the efforts of the inhabitants of the provinces for their defence, in case of invasion by the Americans, the utmost reliance may therefore be placed; but the disproportion between the means of attack and the means of defence is so great, as to call imperiously for every measure to augment the latter.

Under these circumstances, it appears necessary to adopt a course which will tend to consolidate the interests and the strength of the provinces; because no hopes of effectual resistance can be entertained, unless the strength of the provinces collectively (if required) can be wielded at any time, and at any point, within their limits, for the purpose of defence, until assistance can be given; and because this cannot be done, unless the colonial provisions, *for the defence of the provinces* (both legislative and executive) have reference to them collectively, as a *whole*.

There are at present, in America, five provincial legislatures, viz: In Lower Canada, Upper Canada, Nova Scotia, New Brunswick and Prince Edward's Island. These legislatures are assimilated to the legislature of the mother-country, and are independent even in all that relates to the mother-country, commerce and religion excepted. It is also but too true, that the crown has but little influence in the democratic branches of either of these provincial legislatures; and it is unquestionably true, that it has none which can enable it to carry a single measure (however expedient or indispensably necessary for the whole of the provinces, or for the empire) in opposition to any local provincial interest which may militate and be exerted against it.

The Imperial government, therefore, although it is bound to provide for the protection and for the defence of the provinces, manifestly has not means sufficient to enable her to avail herself of their own resources for these most important purposes.

A legislative union of the several provinces would, in a great degree, obviate this evil, and consolidate the interests and strength of the provinces, for the following reasons:—

There are now five assemblies, and it must of course be a more easy task to conduct one, than to conduct five public elective bodies of any description.

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[1]The Quebec Act, 14 Geo. III. Cap. 83, which recites "and that the Clergy of the said Church may hold, receive, and enjoy, their accustomed Dues and Rights with respect to such Persons only as shall profess the said Religion." *Shortt & Doughty, Constitutional Documents*, p. 572.

The members of these five assemblies amount, collectively, to two hundred (or nearly that number), whose majority consequently is one hundred and one. But if an united representation of the provinces was limited to thirty, which it ought not to exceed, this majority would be reduced to sixteen.

In a general united parliament, the representation of any single province would not constitute a majority; and, therefore, mere local prejudices or attachments would be sunk, and the interests of the empire and the provinces would be considered as a whole.

The officers of the executive government in each province (who are, in fact, officers of the empire, and not of the provinces), especially if appointed by the Governor General, would feel themselves secure from the attacks of the democratic branches of the provincial legislature, without sufficient cause; and as they would thus be saved from becoming dependant on the assemblies of their respective provinces, they would not hesitate to do their duty in their several stations, as occasion might require; and the strength of the Imperial government would thereby be materially increased.

One code of militia law, instead of five, would pervade the whole union; and the physical force of all the provinces, being thus subject to the direction of the Viceroy, or Governor-General, might be wielded for the purpose of putting down domestic insurrections, or of repelling foreign invasion at any time, or at any point; a consequence which, of itself, is so distinctly and so equally advantageous to all the provinces, that it appears of itself a sufficient motive for the union.

It must however, be remarked, that what is proposed, is a legislative union of the provinces and no more; that it is not proposed to annihilate any of the offices in the gift of the crown in either of them: on the contrary, it is intended that each province should be left in the charge of a Lieutenant Governor, and that the executive department of each province should be continued.

REMARKS ON A PLAN FOR A GENERAL LEGISLATIVE UNION OF THE BRITISH PROVINCES, IN NORTH AMERICA.[1]

(James Stuart)

The plan now referred to appears to be a revival, with some modification, and under a different name, of a plan framed by D[r] Franklin, as early as the year 1754, for a union of the old British Colonies, now the United States of America, under a general federative government, to provide for their defence, and the interests common to all of them. According to this plan, which was agreed to by commissioners from six of the colonies met in congress at Albany, and which it was proposed, should be established by an act of parliament, a general government for all the colonies was to be formed by delegates to be chosen by the assemblies of the several colonies, over whom a president-general, to be appointed by the crown, was to preside. To this legislative body, to be

[1] *Q. 164, pp. 365-382.* This document also published as a pamphlet, (London: 1824). Public Archives, *Catalogue of Pamphlets, 1493-1877,* No. 1159.

called the grand council, was to be given the power—To lay all imposts and taxes for the purposes of the union—to raise and pay soldiers, and build forts for the defence of the colonies, and equip vessels to guard the coasts, &c: to declare war against and make treaties of peace with the Indian nations; to make laws to regulate the Indian trade, and respecting Indian purchases—to make new settlements, and grant lands in the king's name, &c. Whatever may have been the merits of this plan, which was certainly objectionable in some of its details, there were obviously strong considerations for adopting it, or some other, for the purposes intended, in the then state of the old colonies. These were eleven in number, containing a population of between two and three millions, under separate legislatures, jealous of each other, acting under views of opposite interest, and incapable of combining their resources for their common defence against two formidable enemies, the Indian nations and the French, by whose incursions they were liable to be continually harassed, and by which they were even threatened with destruction. The expediency of obviating the evils arising from disunion and discord, by forming a general local government, to which the public concerns common to all colonies might be entrusted, was very evident; and these concerns were then sufficiently various and important to furnish employment for such a government. The plan in question, nevertheless, was not adopted, nor was any other substituted in its place. It is now proposed that a similar plan should be acted upon, under very different circumstances, and with reference to very different objects: this plan is called a "Legislative Union." From this expression, it would not be easy to determine what kind of union was meant; but it is plain from the explanations that are given, that a union of the nature of a federative union is that which is contemplated. The present local legislatures are to be permitted to subsist, and a general legislature it is proposed, should be established for regulating certain public concerns, common to the several provinces. On this proposal, two questions occur.

1st Whether the present state and condition of the British North American Colonies, are such as to require, or render expedient, a federative union of them, on any terms?

2nd Whether a federative union of these colonies would supersede the necessity of the proposed union of the provinces of Upper and Lower Canada, under one legislature?

When five, and according to one statement, six, colonies are represented as qualified to be members of the proposed confederacy, the impression produced by this representation on the minds of persons unacquainted with the colonies referred to, is imposing; and to relieve them from misapprehension, it becomes necessary to ascertain what these colonies are, as well as their state and condition, with reference to such a measure. The colonies in question are Lower Canada, Upper Canada, Nova Scotia, New Brunswick, Prince Edward's Island, and Newfoundland. Lower Canada contains a population exceeding four hundred thousand souls, more than three fourths of which are French. The population of Upper Canada may be estimated at upwards of one hundred and fifty thousand; that of Nova Scotia, at one hundred and twenty thousand; that of New Brunswick, at seventy thousand; and that of Prince Edward's Island, at thirty thousand. The inhabitants of St. John's Newfoundland, it is presumed,

cannot exceed fifteen thousand; and the rest of the population, engaged in the fisheries, and merely transiently present there, can hardly be taken into account with a view to the measure in question. These two last possessions, from the smallness of their population, as well as from other circumstances, appear little qualified to become independent members of a confederacy of states. The Island of Prince Edward, so far from having claims to higher political importance, it is presumed, would gain by being deprived of a separate legislature, and by an incorporation with the province on the continent, to which it is contiguous,— New Brunswick; it being too inconsiderable to constitute a distinct government. Before Newfoundland could be admitted into such a confederacy, the policy which has hitherto been pursued with respect to it must be abandoned, and a local legislature conferred on it; but if any change were adopted in the government of this island, it would perhaps be found most convenient to incorporate it also with the contiguous province on the continent. The only members therefore, that could be added to the Canadas, in the proposed confederacy, are Nova Scotia and New Brunswick; to which it may be expected, the two islands just mentioned will hereafter be annexed. Between the Canadas and New Brunswick there is absolutely no intercourse whatever; an immense wilderness separates the inhabited parts of both, and they have no exchangeable commodities, admitting of any trade between them by sea. Nova Scotia is remote, is only accessible from the Canadas, by land, through New Brunswick, and keeps up a small trade with Lower Canada, by the Gulph of St. Lawrence, in productions of the West Indies. Between Lower Canada and Prince Edward's Island, there is hardly any communication whatever: some trade between that province and Newfoundland has been maintained by the exportation of flour and biscuit to the latter. It is not easy to perceive in countries, having so small a population, so little advanced in improvement, and so situated with respect to each other, any circumstances that would require at this moment the use of a political machinery so important and expensive as a federative government; nor are there, in reality any objects in respect of which such a government could find employment. In the proposed plan, it is suggested that the federative government would find occupation in regulating and superintending, 1st Religion, 2nd Trade, 3rd Taxation for general purposes, 4th. The defence of the provinces. Upon the head of religion, there is fortunately no call for legislation in the colonies: the wise principle of toleration which obtains there it could not be intended to infringe, and with it no new acts of the legislature are required. In the constitution of the Canadas, the legislatures of those provinces have been wisely restrained from legislating on the subject of religion; and it would be singular, indeed, to expect that the Imperial Parliament, with such views of policy, should give this power under any limitations, to a proposed federative government. With respect to trade, there is also nothing to require, or give exercise to the power of such a government. The external trade of the colonies has been, and will continue to be regulated by the Imperial Parliament: and the little trade now maintained between Lower Canada, and two of her sister colonies stands in no need of legislative provision. The power of taxation for the general purposes of the union, would, in the present state of the provinces, involve little more than the power to impose taxes to defray the expenses of the general government; and, if exercised, would increase

the odium attending the establishment of a government not required by the wants, and incapable of promoting the interests of the colonies. It is to be observed also that if the federative government were empowered exclusively to lay duties on importation, it would be attended with much inconvenience, as those duties, excepting what might be necessary for the purposes of the union, would be subject to appropriation by the local legislatures, and might exceed or be less than what the wants of each particular province would require. The most important subject of legislation for the proposed government—that of the defence of the provinces, could also be managed by it with little or no advantage, in the present state of the colonies. The countries really vulnerable, and on which attack is to be apprehended are the Canadas; but they are so situated as to be capable of deriving little or no support from their sister colonies. The position of the latter is so distant, their population and resources are so slender, and the means of communication between the continental provinces, by land, so imperfect, that it would be idle to institute a government, with a view of regulating and controlling their co-operation in the defence of the former. It appears plain, therefore, that there are, in reality, no useful or legitimate purposes to be answered by a general union of the British Provinces at the present time. Hereafter, when the population and resources of Nova Scotia and New Brunswick will have become more considerable, when the settlements of the latter will have approximated those of the Canadas, and when those under the influence of an improved system of government, to be produced by a union of their legislatures, will have acquired a common English character, with corresponding feelings, and will have cultivated a more friendly and intimate intercourse with their sister provinces, some form of general government for managing the interests common to all the colonies, and combining their resources for defensive and offensive operations, will, undoubtedly, become necessary: but in their present state, the establishment of such a government would be altogether premature. It is imagined, in the proposed plan, that the immediate adoption of it would be agreeable to the colonists: it is not easy to conceive on what grounds this anticipation could be formed. If, as has already been shewn, there are at present no subjects to which the attention and power of such a government could be directed, and no practicable utility could result from it, the colonists could not certainly expect to be pleased with it; they would object to the measure as useless, and to the expense it would entail as being unnecessarily incurred.—They are also, it must be remarked, wholly unprepared for such a measure: it has not been thought of among themselves (except perhaps by a few official persons at Quebec and York, whose personal interests would be injuriously affected by the proposed union of the Canadas, who are hostile to that measure, and who may be partial to a general union as a substitute,) because it has not occurred to them that in their present state, it could be at all useful.—If they were informed that such a measure was in agitation, a feeling of surprise and dissatisfaction, it is believed would be common to the Colonists generally. The French of Lower Canada, if such a confederacy were formed, would certainly not expect to enter into it upon terms of equality, as proposed, with Prince Edward's Island and Newfoundland, which together do not contain a domiciliated population equal to that of one of the towns of that province, or even with Nova Scotia and New Brunswick;

they would expect some regard to be had to the more numerous population, superior resources, trade, wealth, and importance of that province.—The population of Lower Canada exceeds that of all the proposed confederates put together: and it is no small objection to any immediate federative Union of the British Provinces, that this French province, as in its present state it may be called, would be entitled to, and could hardly fail to obtain an ascendancy in any general union that could now be established: thus most injuriously extending the French character and principles even into English colonies as yet free from such inoculation. The English part of the inhabitants of Lower Canada would not only be dissatisfied with the proposed general union for the reasons which have been mentioned, but would consider it, if intended as a substitute for the proposed union of Upper and Lower Canada under one legislature, as being in the highest degree illusory, and as extinguishing all hope of amelioration of their condition, and of the improvement and security of the country. It is strange indeed, that the authors of this plan should have imagined that any one of the evils intended to be remedied by a union of the Canadas under one legislature could be obviated by the proposed general union. As this is broadly asserted, it is necessary to go into particulars to disprove the assertion. The principal evils to be remedied by a union of the Canadas may, in general terms, be stated to be— 1st. The inconveniences and differences in what respects the raising of revenue by imposts, and the apportionment of it between the two Provinces. 2d The composition of the legislature of Lower Canada, as being French in character and views, as excluding the English part of the population from a fair participation in it, and as discouraging the settlement of the colony by native British subjects, and retarding its improvement. 3d The alienation of the two provinces from each other, under the present system, and the tendency of it to render Upper Canada American in principle and character, while Lower Canada is made to continue unalterably French. 4th The diminished capacity of the Canadas, in their divided state, to resist foreign aggression. 5th The obstructions to improvement arising from the divided authority of the two local legislatures.

The first of these evils would not be affected by the proposed measure. The essence of this evil consists in the revenues of the Canadas, under the present system, requiring appropriation, by two independent legislatures; hence the necessity of an apportionment between the Provinces, with the consequent inconveniences engendered by it. If the power of laying duties were given exclusively to the general government, yet as the local legislatures would alone be competent to appropriate the revenue derived from them, the same germ of dispute between the provinces, which is now found so troublesome, would still continue: it would still be necessary to settle the proportions to which the provinces respectively would be entitled: there would be the same conflicting pretentions, the same jealousies, and heart-burnings, as at present. The power of determining these proportions, would not seem also to fall properly within the province of the general government: and if it were to be attributed to it, that government, in which Upper and Lower Canada would be both judges and parties, would not seem well qualified for its exercise. Considering how unequal the demands of the several Provinces for revenue for the public service must be, there would also be great inconvenience in giving to the general government

the exclusive power of laying duties; and Nova Scotia and New Brunswick might be expected to complain of being subjected to this inconvenience for the purpose of palliating the evils arising from the unnatural division of Upper and Lower Canada. Indeed, the proposed plan of a general union, so far as it professes to provide a remedy for the differences between Upper and Lower Canada, is calculated to make the inconveniences arising from these differences extend to the other British Colonies, and injuriously shackle them, for the purpose of palliating evils foreign to them, and which might be easily extinguished by the removal of their cause. The second of the evils above enumerated would not be in the most remote degree influenced by the general union. The principles of internal government acted upon by the legislature of Lower Canada, and the manner of exercising its power, now so much complained of, would still continue their injurious influence, as the composition of that body would remain the same, and every thing relating to the internal economy of the province would depend on its will. The prospect of any assimilation between the French Canadians and their British fellow subjects would continue as hopeless as at present; the discouragements to emigration and the extension of British settlements would remain unmitigated, and the English part of the population, with its claims to consideration from number, intelligence, enterprise, commercial weight and importance, and its wealth, would continue to be deprived of any influence in the legislature. In such a state of things, this latter population could not be expected to find much consolation in the existence of a general government without any objects to employ it, and altogether incapable of affording any relief as to the grievances now adverted to. It would have been well if the authors of the plan of a General Union in opposition to that of the Union of the Canadas, before exerting their influence adversely to the latter, had considered what prospect there could be of improving the resources and strength of the Canadas, and rendering them capable of resisting a Foreign enemy, under a system tending to alienate so important a part of the population from the government and to prevent its increase. It is equally plain that the other evils above stated would not be counteracted by the proposed general union, as the power of the general government could not exert itself on any of the causes that now produce those evils. The estrangement of the two provinces from each other would continue to increase under their separate legislatures, by which an opposition of interest and hostility of feeling in the two countries would be fostered and maintained. leading to a connexion of Upper Canada with the United States at no distant time, and the necessary subjugation of Lower Canada to the same power, from its incapacity singly and alone to resist it. In the mean time, the progress of both the Canadas in improvement would continue to be retarded with the consequent diminution of their value to the parent state, from the inability of their two separate legislatures to legislate adequately for them. The general government, if instituted, could only be a tranquil spectator of these evils. In the proposed plan, it seems to be assumed that the difficulties which have been experienced with regard to appropriations by the colonial legislatures, would be prevented, by the establishment of a general government. As the local legislatures would continue to subsist, and would of course be alone competent to make appropriations for the internal government of the several colonies, no advantage

would certainly be obtained on this head; on the contrary, the executive government would have another popular assembly to deal with, in the delegates from the several assemblies, by which the appropriations for the general government would be made. So that any embarrassments that may have proceeded from this cause would receive addition instead of being diminished, by the proposed plan. To induce a more favourable attention to the plan of a general union, it is alleged, in general terms, "that the consequences of a union of Upper and Lower Canada might be at at once perplexing to the government, and very injurious to one province, and productive of no good to the other." General assertions are easily made, and not unfrequently without any sufficient reason to support them, sometimes in good faith, and at others for the purpose of misleading,—*Dolus versatur in generalibus.* It would have been highly desirable on this point, that some particulars to sustain the general proposition had been specified. It is believed most confidently that it would be impossible to state any *one* particular in respect of which the union of the Canadas would be injurious to either of the provinces, though it might be so to local and personal interests; and it might be easily demonstrated that, besides remedying inveterate evils peculiar to one of them, it would be productive of the greatest advantages to both, and is indispensably necessary to secure the continuance of their connexion with the mother country. With respect to the executive government, the tendency of the measure, it is conceived would be rather to relieve from, than add to perplexities. Upon this head, Lower Canada, as being the most important of the provinces, from which a proper tone and spirit ought to be communicated to the others, and without which these could not be retained, nor would be worth retaining, in subjection, must be referred to as the principal object in view. Now it is impossible to conceive a government more beset with embarrassing and perplexing circumstances than that of this province, arising from the diversity of its population, national and religious prejudices, and the composition of its legislature. The evils generated by these causes are proved by the experience of each successive year, and are becoming more and more troublesome to the executive government. The effect of a union would be to furnish a legislature without violating any principle of justice, that would harmonize with the other branches of the government, that would pursue a course of policy dictated by the interests of the parent-state and those of the colonies, and would secure to itself the respect and confidence of the entire population, by the enlightened and useful exercise of its power. It must certainly be more easy and agreeable for the executive government to deal with such a legislature, than that which now exists. The number of the members of the popular branch of the government by the proposed arrangement, it is true, would be increased; but although this has been adverted to as an objection, there does not appear to be any weight in it. The assemblies as they now subsist, are too numerous to be affected by any influence of the executive government; and from the nature of their composition are more subject to the operation of party spirit and prejudices, than the more enlarged assembly of the Canadas united would be. It might reasonably be expected that the majority of the latter assembly, from its more enlightened character, from its being less under the influence of the feelings just mentioned, and from more wealth being embodied in it, would be governed by a regard for the public

interest, and so far from perplexing the conduct of the executive government would facilitate the discharge of its important duties. There is no reason also for supposing that the greater weight and influence of the united legislature would militate against the continued subjection of the Canadas to the parent state. The union of these provinces, while it would most usefully produce in the minds of the inhabitants a sense of increased importance, would strengthen their aversion to American subjugation, and make them anxious to draw tighter the bonds of connexion with Great Britain, as the only means of escaping that evil. In the proposed plan, more importance seems to be attached to the allaying of a supposed inquietude in the French population, and the anti-unionists, as they are called, than any feeling of this description warrants. In Lower Canada, there have been no anti-unionists among the English inhabitants, except a few officers of government, and an inconsiderable number of other persons resident at Quebec, some of whom were averse to it from a disapprobation of two or three clauses in the Union Bill, and some Irish Roman Catholic emigrants. The French Canadians in their opposition to a union acted under a momentary excitement produced by the same clauses, which has long since subsided. It may even be now asserted that the more intelligent and respectable Canadians, including persons who were foremost in the opposition to the Union, are no longer opposed to that measure, provided it receive modification in two or three of the proposed clauses. They now deem a union expedient even with reference to French Canadian interests; and on this ground, that without it there can be no prospect of the Canadas escaping American dominion; whereas, with the increased strength they would derive from a union, they might expect for a long period to preserve their connexion with the parent state. Without a union, the laws, religion, and language of the French Canadians would be at the mercy of an American democracy, and must soon be prostrated; with it, they might be exposed to be gradually impaired; but, under the legal guarantees they now possess, and the protection of the Imperial government, they would be substantially safe. In approving of a union, therefore, the more intelligent of the French Canadians consult the interest of their countrymen, and there can be no doubt that the view of the subject which has now been mentioned will soon prevail universally among them. In Upper Canada, the opposition to a union was in a great measure produced by momentary excitement, originating in mis-apprehensions of the measure and promoted by interested individuals. Sober reflection has destroyed the erroneous impressions which had been received; and it may be expected that the union will be acceptable in that province, except in some places where it will militate against local and personal interests.

Upon the whole, a dispassionate consideration of the subject, it is presumed, must lead to the conclusion that a General Union of the British Provinces would not at this time be expedient, but would be prematurely adopted; and that such a measure, if resorted to would not in any way supersede the necessity of the proposed union of the Canadas under one legislature, but, on the contrary, the latter measure ought to be considered as preliminary to the former.

London, 8th April, 1824.

PAYMENT OF SALARIES, LOWER CANADA.

Bathurst to Burton.[1]

Downing Street

8th Jany 1825

Sir,

I have the honor to acknowledge the receipt of your dispatch of the 19th July last, stating that the failure of the Legislature to provide for the deficiency of the Revenue permanently appropriated towards defraying the expences of the Civil Government had induced the Earl of Dalhousie to suspend the payment of the Salaries of those Public Officers who are more particularly considered as belonging to the local Establishment, a list of whom you enclose in the hope of receiving Special instructions respecting them.–

I have to acquaint you in reply that I regret extremely the inconvenience to which the individuals are subject, but I cannot at present take upon myself the responsibility of ordering an advance to Officers whose Salaries ought to be provided by the Colony.–

I have the honor to be,
Sir,
Your most obedient Servant

BATHURST

To

The Honble Sir Francis Burton
&c &c

Endorsed

Earl Bathurst

8th Jany 1825

Declining to authorise the payment of Officers, for the present, more particularly considered as belonging to local establishment, and unprovided for by Provl Legislature.

INDEPENDENCE OF JUDGES.

Resolutions of Assembly, Lower Canada, 17 March, 1825.[2]

Committee on the independence of the Judges and on offices of Judicature.

The Order of the Day for the House in Committee to consider whether it would not be expedient to provide for the independence of the Judges of the Court of King's Bench in this Province, and of the Provincial Judges, and to regulate the Offices of Judicature in this Province, being read;

The House accordingly resolved itself into the said Committee.

Mr. Speaker left the Chair.

Mr. *Young* took the Chair of the Committee.

Mr. Speaker resumed the Chair;

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[1] *G. 14, pp. 1-2.*

[2] *Journals of Assembly Lower Canada, 1825, pp. 367-368.* The following year a bill for this purpose was passed by the Assembly, but only received one reading in Council.

And Mr. *Young* reported that the Committee had come to several Resolutions, which he was directed to submit to the House whenever it shall be pleased to receive the same.

Ordered, That the Report be now received.

And he read the Report in his place, and afterwards delivered it in at the Clerk's Table, where the Resolutions were again read as followeth:

Report Resolutions

1. *Resolved,* That it is the opinion of this Committee, That for the more upright and impartial administration of Justice, it is expedient to render the Judges of His Majesty's Court of King's Bench and Provincial Courts more independent than heretofore, by incapacitating the said Judges from Seats in the Executive and Legislative Councils, and disqualifying such as now have Seats therein from sitting or voting in such Councils.

2. *Resolved,* That it is the opinion of this Committee, That for the purposes aforesaid, it is expedient to secure by Law to the said Judges, their respective Offices during good behaviour, in the same manner as those Offices are secured in *England.*

3. *Resolved,* That it is the opinion of this Committee, That it is expedient that a Tribunal be established in this Province, to adjudge the Impeachments which may be brought by the Assembly of this Province against Public Functionaries, and that this Tribunal be the Legislative Council, in conformity to the Despatch of the Right Honorable Earl *Bathurst* to His Excellency Sir *John Coape Sherbrooke*, Governor in Chief of this Province, dated the seventh July one thousand eight hundred and seventeen.[1]

4. *Resolved,* That it is the opinion of this Committee, That it will be expedient for the purposes aforesaid, to secure adequate permanent Salaries to the said Judges, on their being disqualified to take their Seats or sit and vote in the said Councils, and on their being prevented from holding any other Office of profit or emolument under the Crown.

TRANSMISSION OF INFORMATION TO ASSEMBLY.

REPORT OF COMMITTEE OF EXECUTIVE COUNCIL, UPPER CANADA, 6 APRIL, 1825.[2]

Read the following Letter from Major Hillier, enclosing a Copy of An Address from the House of Assembly to His Excellency—

GOVERNMENT HOUSE

6th April 1825

SIR

By Command of His Excellency The Lieutenant Governor, I have the honor to remit to you the Copy of an Address to His Excellency, which has passed the House of Assembly, together with the documents containing all the information, of which his Excellency is Officially possessed, on the Subject

[1]See *Doughty & McArthur, Constitutional Documents, pp. 510-511.*
[2]*Upper Canada, State Book, H. pp. 35-37.*

matter of the Address: And I am to convey to you the Lieutenant Governor's desire, that the Executive Council, be pleased to consider and report to him on the propriety and expediency of Communicating them to the Assembly.

I have the honor to be
&c &c &c

(Signed.) G HILLIER

The Hon^ble^

The Presiding Councillor

Copy of the Address of the House of Assembly to His Excellency—

To His Excellency Sir Peregrine Maitland, K.C.B. Lieutenant Governor, of the Province of Upper Canada, Major General, Commanding His Majesty's Forces in North America &c &c &c–

May it please Your Excellency

We His Majesty's dutiful and loyal Subjects, the Commons of Upper Canada in Provincial Parliament Assembled, considering the Canada Land Company already instituted, or about to be formed in England, for the purchase of Crown and Clergy Reserves, in this Province, as a matter of great interest to the Inhabitants thereof; humbly beg, that your Excellency will be pleased to give to this House such information upon the Subject, as Your Excellency can communicate

On the foregoing Letter and address The Committee of Council Reported as follows.

May it please Your Excellency

The Committee of the Executive Council having before it the Letter of Major Hillier of this date, with its enclosures relating to the proposed Canada Company, respectfully submit that there can be no impropriety or inexpediency in transmitting to the Assembly Copy of the Commission to Certain Commissioners issued under the Province Seal by express Command of His Majesty– Signified through His Majesty's principal Secretary of State, for the Colonies, but as to the other information possessed by Your Excellency on that Subject, the Committee respectfully submit, that permission should be previously obtained from His Majesty's Government–

All which is humbly submitted

(Signed) W^m^ Dummer Powell

CANADA COMPANY.

Minutes of the Intended Arrangements

Between Earl Bathurst, His Majesty's Secretary of State, and the proposed Canada Company.[1]

Ordered, by The House of Commons, *to be Printed,* 15 *April* 1825.

THE Merchants and others, who have united together to establish a Company for purchasing, improving, settling and disposing of lands and other

[1]*Parliamentary Papers, 1825, No. 215.*

property in *Upper Canada*, and especially for purchasing and settling certain lands in the province of *Upper Canada*, which have been reserved for certain public purposes, and for the support of a Protestant clergy, and which are known by the name of "The Crown Reserves," and "The Clergy Reserves," and which merchants and others, for that purpose, have subscribed a capital of One Million sterling;– having applied to Earl Bathurst, His Majesty's Principal Secretary of State having the Department of the Colonies, to advise His Majesty to grant to them a charter of incorporation, and to grant and convey to them, for certain valuable considerations, the said reserved lands in the province of *Upper Canada;*– the following arrangement has been concluded between the committee or court of Directors, appointed by those persons, and acting for the general body, on the one part, and Lord Bathurst on the other part.

1st.—IT being necessary that the consent of Parliament should be obtained, before His Majesty can grant that part of the lands proposed to be conveyed to the company, which have been reserved for the support of a Protestant Clergy, Lord Bathurst will, at an early period of the next Session of Parliament, take the necessary measures for introducing a Bill for this purpose.[1]

2nd.—As it may be expedient to invest the proposed company with certain powers and privileges, which His Majesty, by the mere exercise of His royal prerogative could not confer, Lord Bathurst will introduce into the Bill to be submitted to Parliament, the necessary clauses for investing the proposed company with those powers and privileges.

3rd.—Subjoined to the present minute is a Memorandum, containing the heads of the Bill which Lord Bathurst proposes thus to lay before Parliament, for its consideration. His Lordship must be distinctly understood, as not binding himself to support any particular parts of this Bill, which, in the course of the Parliamentary discussion of the subject, it may appear to him right or expedient to abandon. The subjoined Memorandum must therefore be regarded only as containing those provisions which, upon his present consideration of the subject, Lord Bathurst thinks it would be proper to suggest to Parliament for its adoption.

4th.—Lord Bathurst will move the Lords of the Privy Council to advise His Majesty to issue under the great seal, a royal charter for the incorporation of the proposed company. By this charter would be granted such powers and privileges as it is competent to the Crown, by virtue of its prerogative to confer, without the aid of Parliament. Subjoined to the present minute is a Memorandum, containing the heads of the charter which it is proposed thus to grant. It is however to be clearly and distinctly understood, that notwithstanding the present arrangement, the Lords of the Privy Council (as the constitutional advisers of the Crown on subjects of this nature), and the Lord Chancellor (as keeper of the great seal) will exercise their judgment both as to the propriety of issuing such a charter, and as to any particular clauses in it, which may appear to them illegal or objectionable.

5th.—When the company shall have been actually incorporated, Lord Bathurst will further advise His Majesty to convey to them, upon the terms and

[1]The Canada Company was established by 6 Geo. IV. Cap. 75.

conditions subsequently mentioned, the lands in the province of *Upper Canada,* which are subsequently described.

6th.—That part of the province of *Upper Canada,* which has hitherto been occupied by His Majesty's subjects, is at present divided into districts, which are subdivided into counties, and in each of the counties various townships have been laid out. In pursuance of the statute 31st George 3. c. 31. one seventh of the land comprised in these townships, has been reserved for the maintenance of a Protestant Clergy. These lands are called "The Clergy Reserves." One other seventh part of the lands included in these townships, has been reserved by His Majesty for public purposes, and are known by the name of "The Crown Reserves." In the district of *Niagara,* no reserves have been made for the Crown. But the deficiency has been supplied by a large reservation in the adjoining district of *Gore.* Various grants in fee simple have already been made of parts both of the "Clergy Reserves" and of the "Crown Reserves." Some parts of these lands have been demised for terms of years; other parts have been occupied either with the written licence of the colonial government, or on the faith of verbal promises made by that government, that the occupants should receive grants on leases of the lands in their occupation. There are other parts of these lands which, without any legal conveyance, or even any actual promise or licence, have been appropriated to purposes of a public nature, or for the convenience or advantage of the clergy of the province; other portions which have not hitherto been actually so appropriated, are yet, from their peculiar local advantages, or from other circumstances, so situated as that the occupation of them may be peculiarly convenient or necessary for the public service within the province, or for the erection of churches, school-houses, or parsonage-houses, with small adjoining pieces of land to be used as burying grounds, yards or gardens. Finally, there are within the Clergy and Crown Reserves, various parcels of land which have been occupied for ten years and upwards, by persons who have resided upon them, not only without any grant, but without any pretence of legal title, and who, in America, are usually designated by the appellation of "Squatters," but who, notwithstanding, have not been disturbed in that occupation. When the company shall actually have been incorporated, Lord Bathurst will advise His Majesty to convey to them, upon the conditions subsequently stated, the whole of the Crown Reserves, and one half of the Clergy Reserves, in those townships which, on or before the first day of March 1824, were actually laid out in the several districts before mentioned, in the province of *Upper Canada;* it being understood that the several portions of the Crown and Clergy Reserves which, as above mentioned, have been granted or demised on lease, or occupied on the licence or promise of the government, or appropriated to public or clerical purposes, or occupied without disturbance for ten years, or which may be peculiarly convenient or necessary either for the public service or the ecclesiastical objects already mentioned, are to be wholly excepted; so that there will be conveyed to the company one half of that part only of the Clergy Reserves which will remain, after deducting these excepted lands from the entire quantity originally reserved, and the whole of the Crown Reserves which will remain after making the corresponding deduction of the excepted lands from them.

7th.—In order that the exceptions mentioned in the preceding paragraph, may not operate more extensively than is at present contemplated, Lord Bathurst will immediately instruct the lieutenant governor of *Upper Canada* to adopt all necessary measures for preventing any new grants or leases being made, or licences of occupation given, of any part either of the Clergy or Crown Reserves. But as until the proposed charter of incorporation shall be granted, the corporation already existing in *Upper Canada*, for the management of the Clergy Reserves[1], will in point of law be invested with the power of granting leases of those lands, His Majesty's government is not to be held responsible to the company, if any intermediate leases shall actually be granted; a contingency, however, which it may be presumed is highly improbable. To obviate any danger of misconception upon so important a subject, it is to be most distinctly understood, that the present arrangement is not in any degree whatever to affect the right of the clergy of the province, or of the corporation established for the management of the clergy estates, or of the King as head of the church in *Canada*, to manage, cultivate and settle that portion of the Clergy Reserves which is not to be included in the sales to the company; but that when the portion of the Clergy Reserves which is still to be reserved to the clergy, shall be ascertained and set apart, as is subsequently mentioned, every restriction upon the corporation, in respect of granting leases or otherwise, relating to the management of such portion of the Clergy Reserves, shall be at an end.

8th.—The lands to be granted to the company when incorporated, will be conveyed to them in fee simple, to be held in free and common soccage.

9th.—The company will have no claim to become purchasers of any lands which may be reserved for the Crown or for the clergy, in any townships which may be laid out in any part of the province subsequently to the 1st day of March 1824.

10th.—It is arranged, that so soon as the proposed charter of incorporation shall have passed the great seal (and sooner, if the company should think fit), five commissioners shall be appointed, who shall proceed to *Upper Canada*, with power to ascertain the quantity and to determine the price to be paid by the company, for the said reserved lands.

11th.—Of the five commissioners, two will be nominated by Lord Bathurst, and two by the committee or court of directors of the proposed company. These nominations being made, the court of directors shall then name three other persons as candidates for the office of fifth commissioner. If any two of the four first named commissioners concur in objecting to any one or more of the three candidates, the name or names of the person or persons so objected to shall be withdrawn, and other names substituted by the court of directors, until three candidates shall be named, to no one of whom any two of the four first named commissioners concur in objecting; of these three candidates, Lord Bathurst will select one, who will be the fifth commissioner.

12th.—The decision of the commissioners in every case, will be guided by the majority in number of votes. The senior commissioner appointed by the Crown, will be the permanent chairman of the commission.

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[1] This corporation was created by Letters Patent of Upper Canada, 1819. See *Upper Canada, State Book, G. p. 57.*

13th.—In the event of a vacancy occurring, by the death, resignation, incapacity or permanent sickness of any commissioner, the vacancy is to be supplied by the same party and in the same method as the commissioner creating the vacancy was himself appointed; but until the successor can be nominated in England, a provisional appointment may be made in the province, either by the lieutenant-governor, if the commissioner creating the vacancy was appointed by the Crown, or by the surviving or continuing commissioner of the company, if the commissioner creating the vacancy was appointed by the company, or in the mode prescribed in the preceding paragraph, No. 11, if the commissioner should create the vacancy, the lieutenant-governor will in that case have the right of selection from the three candidates presented to him. A secretary will be attached to the commission, to be appointed by the commissioners themselves, with a salary not exceeding £.500.

14th.—The remuneration of the two commissioners nominated by Lord Bathurst, will be provided for by His Majesty's government; the company will remunerate the commissioners appointed by themselves. The remuneration of the fifth commissioner and of the secretary, and all the expenses which may be reasonably incurred by the commissioners in travelling or otherwise, by reason and in the execution of the commission with which they are to be charged, will be equally divided between His Majesty's government and the company.

15th.—The five commissioners thus nominated, will receive a commission under the great seal of the province; for their guidance in the execution of the duties to be committed to them, they will receive written instructions from Lord Bathurst. If in the progress of the commission it should be necessary to issue further instructions, they will be given by Lord Bathurst in concert and communication with the court of directors; subjoined to this minute is a copy of the commission which it is proposed to grant, and of the instructions which will immediately issue for the guidance of the commissioners.

16th.—Upon their arrival in *Upper Canada,* the commissioners assisted by every means which the local government can command, will proceed to ascertain what is the price to be paid by the company to His Majesty's government, for the lands proposed to be granted to them. In fixing that price they will be governed by the principles and rules subsequently laid down.

17th.—The commissioners will first inquire what sales of land have been effected in each district of *Upper Canada,* for ready money, during the period of the last five years preceeding the first day of March, 1824. By the expression "Sales effected for ready money," will be understood not only sales in which, upon the conveyance of the land, the money was actually paid to the seller in cash, but also sales in which the purchase money was paid by bills of exchange, whether home or foreign, at the usual sights. In such inquiry reference shall not be had to sales of single lots of not more than 200 acres, or smaller parcels of land, or to sales of lands which at the time of such sale were cleared or cultivated; all the lands so as aforesaid to be granted to the said proposed company, being uncleared and unoccupied, and the arrangement between the parties, and the intent and meaning of this agreement being, that the most recent transactions and the largest sales which shall be found to have

taken place previous to the 1st day of March 1824, shall be the criterion or standard by which the commissioners shall be principally regulated in the prices which they are to ascertain and determine. Having ascertained as far as possible, the most recent, and the largest classes of the ready money sales thus effected during the beforementioned period, in all of the districts in *Upper Canada,* the commissioners will proceed to strike an average ready money price for each district, upon equitable principles, regulated by the facts so to be ascertained, and by every other information, in conformity with the terms and spirit of the arrangement made between the parties.

18th.—As it may happen that the value of lands in different parts of the same districts may be materially different, sales effected in one part of such a district would afford no criterion of the value of lands in another part of that district; for the purpose of the intended average valuation, the existing division of the territory into districts, which was adopted for political purposes merely, may perhaps be found entirely inapplicable. Adjoining parts of different districts may bear so strong a resemblance to each other, in those circumstances which constitute the value of lands, that a fair average would be most effectually obtained by classing together lands which lie in different political divisions of the province. If these suppositions should prove to be consistent with the fact, it will be in the discretion of the commissioners, if they shall think fit, in forming the general average, to observe the following rules:—They will ascertain the population of each township in the province, according to the latest census; they will then consider, without reference to the existing division of the province into districts, what townships most nearly resemble each other in population, in advantages or disadvantages of locality, and in natural fertility of soil. They will place together in one class, as many townships, whether lying in the same or in separate districts, as may appear to them sufficiently to resemble each other in the three particulars already mentioned, of population, locality and fertility.

19th.—In fixing the price to be paid by the company for the lands to be granted to them, the commissioners will have regard to the ready money price of lands in each district, when thus ascertained and averaged. These averages will be regarded as the first and most important, but not as the single criterion, by which the price to be paid by the company to His Majesty's Government, is to be determined. To correct any misconception as to the valuation which might arise from having regard to this single test of value, the commissioners will also have regard to the extent of the purchase to be made by the company, and to the advantages to the colony, with which the introduction of so large a capital may be attended; and they will be at liberty to take into their consideration every fact of a distinct and specific kind, which may enable them to draw a more sound and satisfactory conclusion upon the question of value; it being however understood, that the criterion derived from ready money sales actually effected, is always to be adopted, unless reasonable ground may exist for supposing, that in any particular case it would lead to conclusions substantially and materially erroneous.

20th.—In order to obviate any doubt as to which part of the Clergy Reserves is to be granted to the proposed company, the commissioners will cause an exact transcript to be made of the public or government charts of each township, in order that on such transcript they may mark the lots which are to be granted to the company, and the lots which are still to be retained for the maintenance of a Protestant clergy. For this purpose after marking the various lots in the transcript of the chart of each township, falling within any of the Exceptions enumerated in the preceding paragraph numbered 6, with the word "*excepted,*" the commissioners will upon the same transcript of the public chart, affix a numerical mark upon each of the remaining lots of the Clergy Reserves, proceeding in order from No. 1, to the highest number corresponding with the number of lots thus to be divided. The commissioners marks will be made in red ink, to distinguish them from the numerical marks of the government offices. Those lots of the Clergy Reserves which shall thus appear upon the transcript of the government chart, bearing in red ink the alternate numbers 1, 3, 5, &c. shall still be retained for the support of a Protestant clergy. Those other lots of the Clergy Reserves which shall then appear upon the same transcript, bearing in red ink the alternate numbers 2, 4, 6, &c. shall be those which the company are to purchase from His Majesty.

21st.—During a period of fifteen years to commence and be computed from the 1st day of January 1826, the company shall in each year enter into possession of so much of the lands to be conveyed to them, as, according to the valuation to be made by the commissioners, shall be of the value of 20,000£. sterling.

The company will, nevertheless, be at liberty during the year 1825, and in any one of the years during the said period of fifteen years, to take possession of a larger quantity of such lands if they shall think proper so to do.

22d.—On the Monday next following the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in each year during the before-mentioned period of 15 years, the company shall pay to such civil or military officer connected with the receipt of His Majesty's revenues in the province, as His Majesty shall from time to time appoint, the sum of 5,000£. sterling at the least. On each of the days last mentioned, the company, or their agents, duly authorized in that behalf in the province, are to deliver to the lieutenant-governor or other person administering the government, a return, stating particularly and minutely the several lots of land which, during the last preceding quarter of a year, have been occupied by or on behalf of the company, or by or on behalf of any persons claiming by virtue of any grant or lease from them. If it shall appear that, during any such quarter of a year, the company or their agents, grantees or lessees, have entered into possession of lands which, according to the commissioners valuation, shall exceed in value the sum of 5,000£. sterling, the excess of value is to be paid to such civil or military officer as aforesaid, in addition to the quarterly payment of 5,000£.

23d.—If the company, their agents or grantees, shall in any year enter into the possession of any lots of land not included in any of the quarterly returns

of that year, the lands so entered upon, with all their improvements, shall be forfeited to and resumable by the Crown at pleasure.

24th.—The company will be bound, in each quarter of a year, to take possession of the lands to be granted to them, in the proportion of one lot of the Clergy Reserves, for every two lots upon which they may enter of the Crown Reserves, so long as a sufficient quantity of lands of both descriptions remains unoccupied.

25th.—Subject to the preceding conditions, the company will have the right of deciding which of the lands included in the proposed grants to them, shall be occupied by them, their agents, grantees or lessees. at any particular time; and His Majesty will not control the power of the company to select such districts or townships as to them may at any particular period appear best adapted for effecting settlements.

26th.—A receipt, under the hand and seal of the civil or military officer who may be appointed to receive from the company the quarterly payments before mentioned, such signature being attested by one credible witness, shall be a good and sufficient discharge to the company, for every sum of money acknowledged in any such receipt to have been received by the officer granting the same; and for obviating any doubt as to the proper officer into whose hand such money is to be paid, notices will from time to time be transmitted to the office of the company in London, from the Secretary of State, signifying what officer in the colony has been appointed to discharge this duty and grant the proper receipts.

27th.—Upon producing to the lieutenant governor, or person administering the government of the province, a receipt signed sealed and attested in manner before mentioned, a grant will be issued to the company under the great seal of the province, of all the lands occupied by them, their agents, grantees or lessees, in the preceding quarter of a year. Four such grants, therefore, and no more, will be issued in each year. It is to be understood, that the quarterly payment of the money due, and the delivery of the receipts and conveyances, are to be strictly contemporaneous acts, and that such arrangements as may be necessary for that purpose, will be made in the government offices of the colony. The company will execute under their common seal or otherwise, grants or leases to their own grantees or lessees.

28th.—The successive grants of land will be made to the company gratuitously, that is, without any fee of office, demand, or duty being due or payable to any public officer in the province, for preparing, expediting, sealing or issuing the same.

29th.—Persons claiming lands in *Upper Canada*, under any grant, lease, licence of occupation or other conveyance from the company, will hold such lands under and subject to all the laws and regulations which may be then in force within the province, in reference to the grantees or lessees of the Crown.

30th.—The company will, in each year during the before mentioned period of 15 years, place one-half at least of the lands, which during that year may have been occupied and purchased by them, in the possession of settlers, either as grantees or as lessees under them, in the proportion of one head of a family,

or one adult unmarried settler for every 200 acres of such lands; and a proof of such actual settlement of one-half of the lands so to be occupied and purchased by the company, shall be admitted and received by the provincial government, as an equivalent for the performance of the partial clearing and improvements usually required, under the name of "Settlement Duties;" it being agreed, that such actual settlement of one-half of the lands, or such expenditure in compensation for the same, as is hereinafter provided for, shall acquit the company from the performance of any settlement duties on the remaining or unsettled half of the said lands purchased by them. On the Monday next following the 25th day of December in each year, the company or their agents will deliver to the lieutenant-governor, or person administering the government of the province, a return of the names of all settlers placed on such lands during the then current year, with a description of the lands upon which they have been so placed. If it shall upon any such return appear that more than one-half of the lands delivered during the then current year into the company's possession, remain unsettled, then for every lot of 200 acres so remaining unsettled, over and above the said one-half of the whole which may remain unsettled and in compensation for the performance of settlement duties as aforesaid, on the whole of the lands purchased in such year, the company shall within six calendar months next after the expiration of the year in which such settlement duties ought to have been performed, expend and lay out for each such lot the sum of thirty-five dollars, in opening, constructing or improving public roads and bridges, in some one or more of the different townships in which the lands purchased by the company shall be situated, such expenditure to be made in the discretion of the company's agents, and the fact of the money being so expended in such public improvements, to be certified to the satisfaction of His Majesty's surveyor general for the time being, or any other officer whom the executive government of the province may appoint for that purpose [or the company shall become liable to pay to His Majesty the sum of 25 dollars for each such lot, which sum will by His Majesty be expended during the next succeeding year, in opening, constructing or improving the public land or water communications of some one or more of the townships in which the lands purchased by the company shall be situated.]

The company have by their letter of 29 December 1824, decided on expending the sum of 35 Dollars in improvements.

31st.—Any lands which, in pursuance of this arrangement, may be granted to the company, or which the company may grant or demise or lease to any person or persons, shall be resumable by His Majesty, in case the same should be required for canals, roads, the erection of forts, hospitals, arsenals, or any other purpose connected with the defence or security of the province, such requisition to be made either by an act of the provincial legislature, or by the executive government of the province; and in any such event, one arbitrator shall be named by His Majesty, and another arbitrator by the company, or their grantees or lessees, as the case may be, who shall concur in choosing a third; and the price to be paid to the company, their grantees or lessees, for any lands so resumed, shall be decided by the majority in number of such three arbitrators.

32d.—If within the lands to be sold and conveyed to the company, any persons should be found, who, without any legal title, have been, or are, in the actual occupation of any particular lands, the company will have the option either of declining to proceed with the purchase of any lot in which such illegal settlements have been made, or of accepting a grant thereof upon the conditions already stated, with the power of proceeding in due course of law, at their own expense, to dispossess the persons who may be found in any such unlawful occupation. It will be understood, that this provision does not apply to the case of persons, who, without any legal title, have held the quiet and undisturbed possession of lands for ten years, such persons being included within the excepted cases enumerated in the preceding paragraph, numbered 6.

33d.—His Majesty's government will recommend to the legislature of the province of *Upper Canada*, the adoption of any laws which it may be thought expedient to pass there, for carrying into full and perfect effect the arrangement between His Majesty and the company, as explained in this minute.

34th.—In case the charter which may ultimately be offered to the company by His Majesty's government, or the bill which may ultimately pass through every stage, except the last reading in the two Houses of Parliament, should be considered by the company insufficient to give full effect to the present agreement; and if they should, therefore, by a notification made to Lord Bathurst, through their chairman, deputy chairman, secretary, or solicitor, decline to accept such charter, on the ground of an essential variance from the terms of this agreement, or having accepted it, should, within seven days before the last reading of the proposed bill in Parliament, by a notification made as aforesaid, signify their desire, that on such grounds as aforesaid, such bill should not pass into a law; and if by reason of such alleged variation, the company should claim to be relieved from the payment of their share of the expense incurred by the commission; the following process shall be observed: Lord Bathurst will nominate one person, being either a serjeant at law, or one of His Majesty's counsel, and the company will nominate another person, holding such rank as before-mentioned, in the profession of the law, which two persons will be arbitrators, with power to nominate an umpire, holding the same professional rank; and such arbitrators, or in the event of their disagreement, such umpire shall, within one calendar month next after the reference to them, give their opinion in writing, in answer to the following question: viz. "Whether the charter offered by His Majesty's government, or the bill which "may ultimately pass through every stage, except the last reading in the two "Houses of Parliament according as the objection of the company may be "taken, either to the charter or the bill), is or is not such as to give full and "fair effect to the agreement contained in the present minutes, and especially "to the memoranda subjoined, of the heads of the proposed charter and bill, "according to the fair and reasonable construction of those instruments, and "without reference to variations not affecting their substance and spirit?" According to the decision pronounced by the arbitrators or their umpire, the expense of the commission will be divided between His Majesty's government, and the company, or will be borne wholly by His Majesty's government. If, however, the company should think proper to proceed without an Act of Parlia-

ment, they will, of course, bear the whole of their share of the expense of the commission.

35th.—If any event should occur, which should render it impossible for His Majesty's government to execute their part of the agreement, by granting and delivering possession of the lands; this arrangement is to be considered suspended during such inability on the part of the government, and the period of such suspension not to be calculated as any part of the 15 years beforementioned; but the same portion of the 15 years as remained at the time of such suspension, is to continue and remain at the time of the removal of such suspension; and in the mean time it is not to be considered, that any debt has been contracted by the company to His Majesty, in respect of the payments which would have become due, but for such suspension.

36.—It is understood, that until the proposed company shall be legally constituted; the individual subscribers do not, by the present arrangement, incur any personal pecuniary responsibility; but by this stipulation, the individual subscribers do not intend to deny their liability (subject to the preceding condition, N° 34) to defray their moiety of the expense of the commission.

(signed) BATHURST.

SUPPLY BILL, UPPER CANADA, 1825.

Maitland to Bathurst.[1]

Upper Canada

Queenstown,

Miscellaneous No. 178

My Lord, 20th April 1825

I have the honor to report to Your Lordship that the annual Session of the Legislature of this Province was closed on the 13th instant.

The Assembly recently chosen contains a great proportion of New Members; and a more than usual number of controverted Elections engrossed so long a period that the more respectable and intelligent of the members, whose attendance imposes generally a greater personal sacrifice, seeing little prospect of an effectual attention being given to matters of public importance, gradually withdrew, and left a majority of persons who, while they disavowed any inclination to oppose or embarrass the Government, shewed but little disposition to afford it the requisite support or to advance the interests of their Constituents.

Seeing little prospect of much good being done, I put an end to the Session which has already much exceeded the ordinary length. I enclose Your Lordship a Copy of my speech on this occasion, and I feel it necessary to add in explanation, that the supply for the Civil Government was not refused by the House of Assembly, but that a sum

[1] *Q. 338, pp. 140-150.*

much short of that required, was granted, by a Bill which the Legislative Council declined to concur in, without some explanation of the grounds for the deductions; which the House of Assembly would not afford.

I do myself the honor to enclose a copy of the resolutions passed in the Legislative Council, as explanatory of the motives by which that body was governed on this occasion.

Altho' the present House of Assembly is on the whole by no means so well composed as the last, there being a greater number of persons in it unacquainted with public Affairs, and consequently impressed with suspicions which it takes some time to dispel, I am still in hopes that in another Session they will exhibit some desire to relieve themselves from the reproach which is now very generally cast upon them, by a more sedulous attention to public business.

I have the honor to be,
My Lord,
Your Lordship's
Most obedient
humble Servant

P. MAITLAND.

The Earl Bathurst K.G.
&c^ra. &c^ra. &c^ra.

Resolutions of Legislative Council.[1]

Resolved,

That the Legislative Council in considering the Bill sent up from the House of Assembly, entitled, "An Act granting to His Majesty a sum of Money in Aid of the funds for defraying the expense of the Administration of the Civil Government of this Province", find that the proposed appropriation falls much below the charge for the required Services, as appears from the usual Estimate laid on their Table by the Command of His Excellency the Lieutenant Governor.
Resolved.

That the Legislative Council, being wholly unacquainted with the grounds and reasons of this difference, were desirous of receiving such information as the House of Assembly might be inclined to furnish, and which may have induced that House to make so great an alteration as nearly one third of the sum estimated to be necessary to defray the expense of the public Service.
Resolved,

That a conference was requested of the House of Assembly, at which this information was desired, but no answer or information has been received
Resolved,

That in the absence of any information which could, in the opinion of this House, authorize an abatement in the Estimate for defraying the expense of the Administration of Justice and Support of the Civil Government of this Province for the present year, reference was had to the Estimate and supply for 1817, being

[1] Enclosed in above dispatch.

the first time that this Legislature was called upon by His Majesty's Government to defray in future the current charge of the Administration not otherwise provided by the Imperial Parliament.

Resolved,

That this House on comparing the charge thus assumed by the Legislature in 1817 find it amounted to £9201.2.2½[1] being nearly double of the Sum required for the present year.

Resolved,

That the Legislature is not only pledged to the amount it at first assumed, but to provide for the Administration of Justice and the support of the Civil Government, before it makes any other appropriation of the Provincial Revenue, as appears from the Message of Lieutenant Governor Gore, sent down by His Majesty's command, to both Houses of this Legislature, and which forms the preamble of the first Bill of Supply.

Resolved,

That the charge to this Province for the Public Service, assumed by this Legislature in 1817, has diminished, owing to the gradual increase of Crown Revenue, (exclusive of the munificent annual Grant of between Eleven and Twelve thousand Pounds, while the Imperial Parliament continues to vote for the Service of this Province).

Resolved,

That during the same period the contingent expenses of the different Sessions of the Legislature has rapidly increased, being for 1817, £694. 12. 1 and for 1824, £2016.9.4.

Resolved,

That this House having no ground before it, by which it can be satisfied, that a Sum so far short of that which has been always hitherto afforded, and which the Government represents to be still necessary, will suffice for the exigencies of the Public Service, could not pass the Bill for Supply, in the total absence of such information.

Legislative Council
13 April 1825

Maitland's Speech on Prorogation.[2]

Honorable Gentlemen of the Legislative Council,

And Gentlemen of the House of Assembly.

In closing this Session of the Provincial Parliament which has been of more than ordinary length, I find but few measures of general concern presented to me as the result of your labors.

The Bill for the further regulation of our intercourse with the United States of America contains one provision in particular which I should be happy to see exist: I mean the provision for admitting, free of duty, the horses employed in conveying persons removing into or travelling through this Province.

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[1]Statute of Upper Canada, 57 Geo. III. Cap. 3.
[2]Enclosed in above dispatch, No. 178.

I regret much that this relaxation, which may itself, I fear, seem in some measure, repugnant to that part of the Canada Trade Act which regulates the intercourse between this Province and the neighbouring Country, should have been connected with others that appear more decidedly inconsistent with that statute. But altho' these circumstances compel me to reserve the Bill for the signification of His Majesty's Pleasure, I will, in the mean time, take some measures upon my own responsibility, as may give immediate effect to the provision to which I first alluded, in the confidence that it will be ultimately confirmed.

The Amendments you have made to the act incorporating the Welland Canal Company, will have the effect, I trust, of facilitating the execution of a Work, which, if conducted to a successful termination, must be of incalculable importance to this Province.

I regret to perceive that Your Session has terminated without affording to the Government the means of carrying on the Public Service during the present year.– So long as I continued to confine the Charges of the Administration of the Civil Government, as rigidly as the Service would permit, to that scale which I found established,– which His Majesty's Government had long approved, and which the Legislature of this Province, since their assumption of it, had repeatedly investigated, and as often confirmed, I did not apprehend that I should fail to receive the ordinary and necessary support for the public Service. It will be incumbent on me to afford an early opportunity of supplying this omission, in the mean time I shall endeavour as much as possible to avert the inconvenience to which the public Service may be exposed.

Gentlemen of the House of Assembly.

Desirous that the public expenditure should always receive due consideration, I afforded you, at a very early period of the Session, the opportunity of investigating the public Accounts, and I have answered promptly, and as satisfactorily as it was in my power, to every call for information.

In the absence of any provision for the support of the Civil Government, I am not at liberty to consent to any other appropriation of the Provincial Revenue, a necessity which will account for my rejection of measures which must otherwise have received my cheerful concurrence.

Honorable Gentlemen, and Gentlemen,

I have witnessed in late Sessions with so much pleasure, the beneficial effects of a vigilant application in the Legislature to objects of great and permanent interest to the Colony, that I indulge in the hope that circumstances will not again interpose themselves to prevent the consideration and furtherence [sic] of those important measures which have of late years so auspiciously engaged attention.

HILLIER TO EXECUTIVE COUNCIL, UPPER CANADA.[1]

GOVERNMENT HOUSE

YORK 18th April 1825

SIR

I am Commanded by His Excellency the Lieutenant Governor, to request the attention of the Honorable Executive Council, to the Circumstance of the late Session of the Provincial Legislature, having closed without provision being made for the administration of Justice; and Support of the Civil Government–

A Copy of the Estimate Submitted to the Provincial Parliament, at the beginning of the late Session, and a Statement of the probable Amount of the Funds that may be disposable by the Government within the Current Year, are remitted for the information of the Board– And His Excellency is desirous of receiving the advice of the Council as to the necessity of reductions in the Establishment of the Public Departments, under the present circumstances; and in case of Such necessity which His Excellency fears will be found to exist, in what particular Branches of the Service it may with most propriety be effected

I have the honor
&c &c &c

(Signed) G HILLIER

The Hon^ble
The Presiding Councillor

REPORT OF EXECUTIVE COUNCIL, UPPER CANADA, 22 APRIL 1825.[2]

The Board resumed the Consideration of His Excellency the Lieutenant Governor's reference of the 18th Instant, requesting the attention of the Honorable Executive Council, to the circumstance of the late Session of the Provincial Legislature, having closed without provision being made for the administration of Justice and Support of the Civil Government, which was read in Council on that day, And after mature deliberation agreed to Report as follows

The Executive Council, having under consideration your Excellency's reference of the 18th instant, requesting their attention to the circumstance of the late Session of the Provincial Legislature having closed, without provision being made for the Administration of Justice and Support of the Civil Government, with a Copy of the Estimate Submitted to the Legislature, and a Statement of the probable Amount of the Funds that may be at the disposal of the Government within the Current Year, remitted for the information of the Board, and expressing your Excellency's desire of receiving the advice of the Council, as to the necessity of reductions in the establishment of the public Departments under present circumstances: and in case of Such necessity (which your Excellency fears will be found to exist) in what particular Branches of the Service it may with most propriety be effected, have the honor to report.

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[1] *Upper Canada, State Book, H., p. 38.*
[1] *Upper Canada, State Book, H., pp. 46-47.*

That the Executive Council have not been able to discover from the Documents before them, that any of the Services for the administration of Justice and Support of the Civil Government, are beyond a fair remuneration, or that their [sic] is any defalcation in the Provincial Revenue, and being of opinion that the Legislature is pledged for these Services as assumed in 1817—they cannot under present circumstances, advise any reductions in the Establishment of the Public Departments, which have been Sanctioned by His Majestys Government, and recognized by the Repeated Acts of the Colonial Legislature

Wm. Dummer Powell C J–

CROWN REVENUES.

Bathurst to Maitland.[1]

Duplicate

Downing Street

26 July 1825

Sir,

I have the Honor to acknowledge the receipt of your dispatch of the 28 April last, enclosing Copies of two Addresses presented to you by the House of Assembly of Upper Canada in the late Session of the Legislature requesting to be furnished with an Account of His Majesty's Casual Revenue and the appropriation thereof, for the last four Years; and an Account of the Fees that have been paid upon Grants of Land by the Crown for the last four Years and the usual appropriation thereof for the same period, and also with a statement of the Amount of the Annual Receipts from the Crown Reserves Leased to His Majesty's Subjects in the Province, and the Amount now in Arrear– I have to acquaint you in reply that I entirely approve of the Answers returned by you to the Addresses in question, and in conveying to you His Majesty's permission to furnish the Accounts applied for by the Assembly on the present occasion I am to desire that if the application should be renewed with the view of making it an Annual Measure, you will inform the Assembly that you are prevented from furnishing the Accounts of the Crown Revenue without applying to His Majesty's Government for instructions on the subject.–

I have the Honor to be
Sir,
Your most Obedient
Humble Servant

BATHURST

Major General
Sir Peregrine Maitland
&c &c &c

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[1] *G. 61, pp. 236-238.*

Downing Street
26 July 1825

Endorsed
From
Earl Bathurst

Has received Addresses of the House of Assembly calling for Returns of the Revenues of the Crown.

The Returns now called for may be furnished upon this occasion, but not as a permanent measure.

SUPPLY BILL, LOWER CANADA 1825.

Burton to Assembly, Lower Canada, 18 February, 1825.[1]

Estimates.

The Lieutenant Governor lays before the House of Assembly, an Estimate of the Ordinary, Permanent and Growing Expenses of the Civil Government of *Lower Canada,* for the year One thousand eight hundred and twenty-five, and of the Revenue applicable to the discharge thereof: From these it appears that the further sum of Thirty-one thousand four hundred and fifty-six pounds, six shillings currency, will be necessary to meet the current expenditure of the year.

In forming this Estimate, regard has been had to the Expenditure of former years, from which little variation has been made; and the Lieutenant Governor relies on the zeal and loyalty of the Assembly to provide for the necessary appropriations for the deficiency of the Supplies.

Should there by any further objects of expense necessary to be provided for, the Lieutenant Governor will make a communication of them to the House of Assembly by Message, before their proceedings on the Estimate can be closed.

FRANCIS BURTON,
Lt. Governor.

Castle of *Saint Lewis,*
Quebec, 18th February, 1825.

Resolutions on Supply, Lower Canada, 16 March, 1825.[2]

1. *Resolved,* That it is the opinion of this Committee, That a Sum not exceeding Four thousand five hundred Pounds Sterling be granted to His Majesty, to defray the Salary of the Governor in Chief, from the first of November one thousand eight hundred and twenty-four to the thirty-first of October one thousand eight hundred and twenty-five.

2. *Resolved,* That it is the opinion of this Committee, That a sum not exceeding Five hundred Pounds Sterling be granted to His Majesty, to defray

[1] *Journals of Assembly, Lower Canada, 1825, p. 187.*
[2] *Journals of Assembly, Lower Canada, 1825, p. 336.* This above is illustrative of the civil list as voted item by item.

the Salary of the Secretary to the Governor in Chief, for the same period, provided he resides in the Province.

3. *Resolved,* That it is the opinion of this Committee, That a sum not exceeding Two hundred Pounds Sterling be granted to His Majesty, to defray the Salary of an Assistant Secretary to the Governor in Chief, for the same period

. . . . . .

BURTON TO BATHURST.[1]

CASTLE OF ST. LEWIS

March 24, 1825

No. 16.

MY LORD

I have the honor to inform Your Lordship that I closed the Session of the Provincial Parliament Yesterday with a Speech from the Throne, A Copy of which I enclose, together with one delivered by the Speaker of the House of Assembly on presenting the Appropriation Bills.

It is with infinite satisfaction I acquaint Your Lordship, that the differences which have so long subsisted between the Legislative bodies on financial matters, have been amicably settled: And by the Enclosed Bill, Your Lordship will see that the Assembly have decidedly Acknowledged the right of the Crown to dispose of the Revenue arising out of the 14 of George 3^{d} And certain others the produce of which is Already Appropriated by Law, And that henceforth it will only be necessary to apply to the Assembly for such Aid as may be necessary to make up the deficiencies of the Revenues above mentioned to defray the Expences of the Civil Government and administration of Justice.

I have to hope that the result of this Session will prove satisfactory to Your Lordship, & to observe that the Appropriation Bills passed the Council, with only two dissentient voices, and that for the last twenty five Years, there has not been so quiet a Session.

I have the honor to be

My Lord

Your Lordship's

Most Obedient

humble Serv^{t}

FRANCIS BURTON.

The EARL OF BATHURST K.G.

&c. &c. &c.

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[1] *Q. 171, pp. 12-13.*

BATHURST TO BURTON.[1]

DOWNING STREET

4th June 1825

SIR,

I have received your two dispatches of the dates of the 24th & 30th of March ulto—

In the first of those Dispatches, you state that "you inform me with infinite "satisfaction, that the differences which have so long subsisted between the Legis- "lative Bodies on Financial matters have been amicably settled, & that I shall "perceive by the draft of a Bill which you enclose, that the Assembly have "decidedly acknowledged the right of the Crown to dispose of the Revenue "arising out of the 14th George 3rd &c–

I regret that it is not in my power to Consider this arrangement as in any degree satisfactory. The special instructions which had been given by His Majesty's Command to the Governor General in my dispatches of 11 Sepr 1820[2] & 13 Sepr 1821 had imposed on him the necessity of refusing all arrangements that went in any degree to compromise the integrity of the Revenue known by the name of the Permanent Revenue. & it appears to me, on a careful examination of the measures which have been adopted, that they are at variance with those specific & positive Instructions.

The Executive Government had sent in an Estimate, in which no distinction was made between the expenditure chargeable upon the permanent revenue of the Crown, & that which remained to be provided for out of the Revenues raised under Colonial Acts–

In other words, had the whole Revenue been raised under Colonial Acts, there would have been no difference in the manner of sending in the Estimate.

The Estimate was given in at £65000 Stg of which the Assembly appear to have voted £58,074, as "amount of votes" & £3537, specially provided for by Provincial Acts; & they refuse to incur any expenditure of £3390 for different items. Instead of the King's permanent Revenue having certain fixed charges placed upon it, of which the Assembly here made cognizant, that revenue was pledged, together with the Colonial Revenue, as the ways & means for providing for the expences of the year–

The Assembly, having calculated the Amount of the permanent Revenue, & of the Taxes received under Colonial Act, proceeded to vote from the unappropriated Revenues, "such Sum or sums as might be necessary to make up & "complete a Sum not exceeding £58,074" Stg & the extent of which must necessarily depend on the amount of the Taxes received from the permanent Revenue. The consequence of this arrangement is, that the permanent Revenue will not be applied for the Payment of such expences as His Majesty may deem fit, but on the contrary, for the payment of whatever expences the Colonial Legislature may think necessary– & the only money to be raised under the King's Revenue being thus appropriated, no means remain for the liquidation of those expences formerly carried on the King's Revenue, & many of them specially Authorized

[1] *G. 14, pp. 263-272.* For the removal of this censure see *below p. 321.*
[2] See *above, p. 54.*

by His Majesty, which have been rejected by the Assembly in this Instance– The Appropriation of the permanent Revenue of the Crown will always be laid by His Majesty's Command before the House of Assembly as a document for their information, & for the general regulation of their proceedings. They will therein see what services are already provided for by the Crown, & what remain to be provided for by the Legislature: & they will be thus assured that the proceeds of the Revenue of the Crown (whether more or less, & from whatever sources derived) will exclusively & invariably be applied, under the discretion of the King's Government, for the benefit of the Province–

With respect to the items rejected by the Assembly I shall feel it my duty after having given attention to each individual article to give special instructions to the Governor General on his return to direct the payment of those which it may be thought expedient to continue–[1]

As the Bill is limited to one year, I shall not think it necessary to recommend to His Majesty to disallow it, but Confine myself to instructing His Majesty's Representative in the Province of Lower Canada not to sanction any Measure of a similar nature.

I have the honor to be
Sir
Your obedient Servant

BATHURST

L[t] Governor
Sir Francis Burton.
&c &c &c

Endorsed
Down[g] St
4 June

From
Earl Bathurst

ALIENS.

Bathurst to Maitland.[2]

Downing Street
22[nd] July 1825

Sir,

I have had under my consideration the representation which I have had the Honor of receiving from you on the Subject of Aliens who have become Settlers

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[1]See *below p. 280.*
[2]*G. 61, pp. 223-225.* For proceedings in Council on this dispatch *see below, p. 303.*

in the Province of Upper Canada[1] and I regret that it arrived at a period of the Session too late to admit of any measure being proposed to Parliament—

I am of opinion that it will be advisable to confer by a Legislative enactment the Civil rights and privileges of British Subjects upon such Citizens of the United States as being heretofore Settled in Canada are declared by the judgment of the Courts of Law in England and by the opinions of the Law Officers to be Aliens, and of including in the same enactment the disbanded Officers and Soldiers of Foreign Corps which were in the British Service, and such other Foreigners resident in Canada as are in truth Aliens altho' they have hitherto enjoyed without question the rights of British Subjects.

If therefore you should deem it expedient to submit to the Legislature of the Province at its next Session, a Bill for the relief of such persons as are now in the Province, I have to convey to you His Majesty's sanction for assenting to it, notwithstanding the general Royal Instruction on that subject and there is no necessity for you to withhold such Bill for the signification of His Majesty's Pleasure unless it shall pass in such a shape as may make you doubtful of its expediency.

With regard to the future I should be happy to receive from you the heads of such enactments as will in your judgement place the Naturalization of Emigrants resorting to Upper Canada on a footing the most convenient and the most likely to conduce to the security and welfare of the Province.

I have the Honor to be

Sir,

Your most obedient

Humble Servant

BATHURST

Major General

Sir P. MAITLAND K.C.B.

&c &c &c

Endorsed

EARL BATHURST 22d July 1825 ALIENS

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[1]Maitland's opinion as given in a memorandum enclosed in a dispatch of 22 April, 1825 was:—

"The opinion of the Crown Officers supported by the late decision in England relative to the right of American citizens to claim to be regarded as British Subjects in any part of the British Dominions to which they may remove has set at rest a question of much delicacy and importance as applied to this Province—It seems however at the same time to impose a strong necessity for the interference of the Imperial Parliament in order to protect in their possession and to quiet the apprehensions of a very large proportion of the Inhabitants of this Province upon this Subject which involves many considerations I have written on different occasions to Your Lordship and I should be most happy if time can be found during the present Session of Parliament to bestow attention upon it.

There are in this Province many reduced Officers and Soldiers of certain foreign Corps who served during the late War and have received Grants of Land in obedience to special Instructions from His Majesty's Government, but are not and cannot be naturalized except by some Act of the Imperial Parliament." *Q. 338, pp. 164-165.*

Maitland to Assembly, Upper Canada, 15 November, 1825.[1]

P. Maitland.

The Lieutenant Governor thinks proper to call the attention of the House of Assembly to a subject which he has long regarded as one of much importance to the Province, and of particular interest to a large portion of its inhabitants.

The House of Assembly is aware that of those persons who have come to this Province from foreign countries, and more especially at an early period of its settlement, many had been citizens of the United States of America, and subjects of that Government.

Whatever difference of opinion may have formerly prevailed with respect to the civil rights of persons so situated, from the circumstance of the United States of America having once been British Colonies, the solemn decision of the question in the Courts of the Mother Country,[2] whose laws we have adopted, leaves no room for doubt, and these inhabitants of the Province are exposed to the inconvenience of finding those rights denied which they have hitherto enjoyed, but which, whenever they may be questioned, must be decided upon by those to whom the administration of justice is committed, according to law, and without regard to inconveniences which might be much regretted.

There are also in this Province a number of Emigrants from other foreign countries, and many discharged soldiers of foreign corps, who, not having strictly complied with the provisions of those British statutes under which they might have been entitled to the privileges of subjects, are equally, by law, exposed to the danger of being regarded as aliens.

Of all the persons thus situated, the greater part became inhabitants with the knowledge of the Government; between those and others it does not appear necessary to discriminate. In the persuasion that they might all be safely received and acknowledged as subjects with no other qualifications than those which the Legislature of this Province has, from time to time, thought it expedient to impose, the Lieutenant Governor has earnestly pressed the subject upon the consideration of his Majesty's Government, and has it now in his power to communicate to the House of Assembly that he has received His Majesty's express sanction to assent to an enactment which may afford relief to such persons as are now in the Province, and the Lieutenant Governor doubts not that a subject so important will receive the early and attentive consideration of the House of Assembly.

Government House, 15th November. 1825.

CLERGY RESERVES.

Opinion of Executive Council, Upper Canada, 21 November, 1825.[3]

The Executive Council having had under their consideration the Despatch of the Right Honorable Earl Bathurst—His Majestys Principal Secretary of State for the Colonies dated Downing Street 22d July 1825 directing Your

[1] *Journals of Assembly, Upper Canada, 1825, p. 10.*
[2] *See above p. 234.*
[3] *Upper Canada, State Book H., pp.* 166-170.

Excellency by His Majestys Commands to constitute and erect from time to time with the advice of the Executive Council for the affairs of the Province of Upper Canada within every Township or Parish which now is or hereafter may be formed constituted or erected within the said Province one or more Parsonage or Rectory or Parsonages or Rectories according to the Establishment of the Church of England and that Your Excellency do from time to time by an Instrument under the great Seal of the said Province endow every such Parsonage or Rectory with so much or such parts of the land so allotted and appropriated as aforesaid in respect of any lands within such Township or Parish which shall have been granted subsequently to the commencement of a Certain Act of the Parliament of Great Britain passed in the 31st year of the Reign of His late Majesty King George the Third entitled An Act to repeal Certain parts of an act passed in the 14th year of His Majestys Reign entitled an act for making more effectual Provision for the Government of the Province of Quebec in North America and to make further provision for the Government of the said Province or of such lands as may have been allotted and appropriated for the same purpose by or in virtue of any Instruction which may have been given by His said late Majesty before the commencement of the said Act as Your Excellency shall with the advice of the said Executive Council judge to be expedient under the existing circumstances of such Township or Parish most respectfully report.

That they are convinced of the propriety of dividing the Province into Parishes with as little delay as possible not only because it appears necessary before the new system of land granting goes into operation which implies such division to have previously taken place, but as giving a religious character to the country, but in carrying the measure into effect the Townships not being of equal dimensions tho' all too large for one Parish the Board find some difficulty in advising into how many they ought to be divided.

On reference to the Surveyor General it is found that a numerous class of Townships are those of nine miles by twelve containing about 69,000 acres one seventh of which or about 9800 acres is the appropriation Set apart for the maintenance of a Protestant Clergy–

Assuming only two Parishes for each of these Townships it is humbly submitted that the appropriation be divided into three parts and after forming any such Township into two parishes by a division as convenient as circumstances will admit, that 3300 acres or one third of the appropriation be attached as an endowment to the Parsonage of each from the Reserves appertaining or belonging to such Parish and a similar proportion be observed in Townships of other dimensions, that the remaining one third consisting of about three thousand two hundred acres be reserved in the possession of the corporation for general purposes, the same to be sold when it shall be deemed for the Interest of the Church, the proceeds of such Sale to be funded in the British Stocks and the Interest only to be applied to the Support of a Protestant Clergy

That a general fund gradually accumulating, as Sales of this one third take place, will be found extremely convenient for the Support of Clergymen in Parishes till their respective endowments become available, and likewise to supply Salaries to the Clergyman established in such Towns and Villages as may from time to time grow up in different parts of the Province and for which

there is no particular provision and likewise for such Dignitaries as the Church establishment may be found to require–

Such general disposable fund becomes further necessary from this circumstance that many Townships were settled before 1791 and therefore contain no Reserves, Others in which the Reserves form a Block in the middle and cannot therefore be productive for a long time, consequently the Clergymen of Such must in the Interim be supported out of the general fund–

That the Endowment attached to each Parsonage or Parish shall remain with the Corporation for the purpose of managing and leasing till assumed by the Incumbent as hereinafter provided, the proceeds while under such management being paid into the general fund.

That the two Parishes into which any Township is divided may be at first conferred upon the same Incumbent who shall be required to serve at each once on every Sabbath except where the ordinary may deem it expedient to order otherwise.

That so soon as any Clergyman shall prefer his endowment to the Salary allowed him by Government out of the general Fund arising from Lands Sold or leased it shall be permitted him to do so and his Salary in such case shall be transferred to another Parish, for example Suppose in Cornwall Brockville, or Kingston &c the whole Endowment 6,600 acres is divided into 66 farms of one hundred acres each and that such farms let for £5 .. .. they would produce a Revenue £330—on which the Incumbent would relinquish his Salary of £200 Sterling and take the Endowment.

It is further humbly submitted that as soon as the Endowments of each of the Parishes into which any Township is Divided become sufficient to Support a Clergyman one shall be appointed to each at the request of the ordinary saving the rights of the Incumbent for the time being.

In building Churches, reference it is respectfully conceived should be had to the probable population of the Parish so that the number of Pews may be sufficient for its accommodation but vacant Pews till required by the Parishoners to be at the disposal of the vestry by leasing for the benefit of the Church

It is also respectfully recommended that the Incumbents of Parishes be restricted in leasing to three lives or twenty one years the usual time in such cases.

As it appears from the Despatch of Lord Bathurst as well as from the 31st of His late Majesty, that besides one seventh of the whole lands which by that Act have been set apart for the maintenance of a Protestant Clergy, certain other appropriations had in some instances been previously made by virtue of Instructions from His said late Majesty a return of these from the Surveyor General together with the lands appropriated for each Township of [sic] Parish respectively will be found necessary to enable your Excellency in Council to point out the particular lots or Parcels of land which shall form the Endowment of any Parsonage or Rectory–

Should Your Excellency be pleased to approve of these suggestions it is humbly Submitted that Lord Bathursts Despatch with this Report be referred to His Majestys Attorney General that the necessary legal Steps may be imme-

diately taken for dividing the Province into Parishes and constituting and erecting Parsonages or Rectories with the Endowments as herein advised.

All which is respectfully Submitted.

Signed. W^m^ CAMPBELL C J.

IMPERIAL ADMINISTRATION.

HORTON TO MAITLAND.[1]

Downing Street

9th April 1825

SIR,

In the absence of Lord Bathurst I have the honor to acquaint you that His Grace the Master General of the Ordnance has appointed a Commission of Engineer Officers to proceed to North America for the purpose of examining & reporting upon the defences of the British Provinces– I am to request that you will afford to Col. Sir James Carmichael Smyth and the other Officers composing this Commission every assistance in Your power in forwarding the important objects with which they are intrusted & that you will communicate unreservedly with them & give them every facility of conveyance which you may have at your disposal to enable them to reach the different places which they are directed to visit–

I have the honor to be
Sir,
Your most obedient Servant,
R. W. HORTON

To
Major General
Sir P. MAITLAND

BATHURST TO MAITLAND.[2]

Circular

DOWNING STREET

May 1825.

SIR,

His Majesty's Government having taken into consideration the expediency of establishing the British Metallic Currency as the circulating medium of all the Colonial Possessions of the Crown I transmit to you enclosed an Order of His Majesty in Council declaring that a Tender or Payment of British Silver Coin to the amount of 4s. 4d. should be considered as equivalent to the Tender or payment of one Spanish Dollar and so in proportion of any greater or less amount

[1] *G. 61, pp. 114-115.*

[2] *G. 61, pp. 163-171.* This dispatch was communicated to the Executive Council of Upper Canada which recommended on 2 February 1826, that: "His Majesty's Attorney General be requested to prepare the necessary Proclamation, that the Inhabitants of this Province may be made acquainted with the Law on the subject." *Upper Canada, State Book, G. p. 189.*

of Debt & also that British Copper Money should be made a legal tender to the Amount of 12d. in one payment in all the British Colonies for it's due & proper proportions of British Silver Money, & I have to signify to you His Majesty's Commands that on the necessary previous arrangements being made with the Officer in charge of the Commissariat, you cause the said Order to be duly promulgated & carried into execution in the Colony under your Government– I also transmit for your information a Copy of the circular Instructions which the Lords Comm[rs] of the Treasury have directed to be addressed to the Officer in charge of the duties of the Commissariat Department in the Colonies by which you will learn the principles & grounds upon which 4s. 4d. of British Silver & Copper Money is declared to be equivalent to the Spanish Dollar–

With a view to give the fullest effect to the intentions of the Lords Commissioners of the Treasury, I have to direct that at the same time that you promulgate the Order in Council Public Notice be given that the holders of British Silver Money may demand from the Officer in charge of the Commissariat Department Bills upon the Lords Comm[rs] of the Treasury at thirty days sight in exchange for any Sums whatever tendered by them in British Silver Money not less in Amount than £100 at the fixed rate of a Bill for £100 for every £103 of British Silver Money so tendered–

And you will farther publicly declare what is the Sum of "Money of Account" to which the British Silver Money is in the spirit of these Instructions equivalent, thus if the Spanish Dollar current is equivalent to 5s. of "Money of Account" you will declare that 17s. 4d. of British Silver & Copper Money is equal to one Pound of such "Money of Account"– If the Spanish Dollar is equivalent to 5s. 4d. of the "Money of Account" 16s. 3d. of British Silver & Copper Money must be declared equal to one Pound of such "Money of Acccount," and if the Spanish Dollar is equivalent to 6s. 8d. of "Money of Account" 13s. of British Silver Money must be declared equal to one Pound of such "Money of Account". If the actual value of the Spanish Dollar in the "Money of Account" is not furnished by any of these examples the proportions between the British Silver Money & the "Money of Account." may be easily calculated upon the same principle according to the actual value–

I have only further to acquaint you that the Lords Commissioners of the Treasury have caused to be shipped for the Colony under your Government the sum of £30,000 in British Silver Money & a small supply of copper money for the service of the Canadas.

I have the honor to be

Sir

Your obedient

humble Servant

BATHURST

Major Gen[l]

Sir Peregrine Maitland K.C.B.
&c &c. &c

Endorsed *Circular*

Downing Street

May 1825

from Earl Bathurst.

Transmitting Copy of an Order in Council for establishing the British Metallic Currency as the Circulating Medium of all the Colonial Possessions.

Horton to Maitland.[1]

Circular

Downing Street

London 26th July 1825

Sir

Much inconvenience having been experienced from the want of some uniform mode in which all official communications should be addressed to this Department by those employed under it; and the private directions which have been issued on this subject not having been permanently followed in many instances; I am directed by Earl Bathurst to convey to you the following Instructions relative to the forms to be observed in your official correspondence with this Department.

1st You will number your Dispatches, beginning at the commencement of each year with N° 1, and proceeding with the numbers successively to the end of the year–

2nd You will take especial care that each dispatch and letter of a public nature shall be docketed.– The docket of a dispatch to consist of the name of the place where it was written, it's date, your own name, the number of it's enclosures if any, and a short abstract of it's contents.–

3rd Should you have occasion to address letters to this Office on subjects not immediately connected with the series of your official correspondence, but which are not of a private and confidential nature, you will not number such letters, but will mark them "Separate."– If however you find occasion to write on subjects which are strictly of a private nature, and intended only for the consideration of the Chief Secretary, and Under Secretaries of State, you will not number such letters but will mark them "Secret and Confidential," but it is distinctly to be understood that no letters for this Department are to be so marked, excepting such as are of so private a nature, as to prevent their being deposited with propriety among the Archives of this Department and that all other letters be so deposited.–

4th You will as far as possible confine each dispatch to one subject, and whenever you may be obliged to deviate from this instruction you will make a note in the margin of each new subject.–

5th In submitting enclosures in your dispatches you will state briefly in the body of the dispatch the contents of each of the enclosures, at the same time directing attention to such points contained in them as may appear to you to be particularly deserving of Notice.–

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[1] *G. 61, pp. 242-244.*

6th On the 1st January each year you will acquaint His Majesty's Secretary of State for the Colonial Department with the number of dispatches and letters which you may have addressed to this Department during the preceding year with copies of the dockets of each dispatch and letter–

You will consider these instructions as superseding any former directions upon the subject which may have been sent, with the exception of those which have been given for the separate headings of the different subjects of your Colonial correspondence, and the regular transmission of duplicates.–

I have the honor to be
Sir,
Your most obedient humble Servant,

R. W. HORTON.

To
Major General
Sir Peregrine Maitland, K.C.B.

PAYMENT OF SALARIES, LOWER CANADA.

Bathurst to Dalhousie.[1]

Downing Street
7 Jan 1826

My Lord,

With reference to my dispatch to Sir Francis Burton of the 4th June last,[2] in which I informed him that I would convey to Your Lordship instructions with regard to the items rejected by the Assembly, and to your Lordships remarks as to the necessity of those Charges, I have now to convey to Your Lordship instructions to defray all the Salaries and other expences which have hitherto to [sic] been charged upon the Revenues at the disposal of the Crown for the expences of the Civil Government and the Administration of Justice, up to the 31st Decr. last–

The Circuit allowances to the Judges and the Salaries of the Lieut Governor of Gaspé, the Advocate General and the Agent for the Province I am of opinion may be permanently charged on the Crown Revenues. As the Assembly has not made any provision for the undermentioned offices I am to desire that they may be discontinued viz

French Translator	£200
Clerk of the Land Board	100
Second Clerk of the Crown in Chancery	100
Clerk of the Market	123
Pension to Mde Champlain	10
Collector of Nouvelle Beauce	30
	£563

[1] *G. 15, pp. 19-21.*
[2] See *above p. 272.*

The deductions made from the Salaries of the Sheriff at Sherbrooke, the Clerk of the Court and other minor Appointments, may in the present instance be paid to them, and I have also to sanction the payment of the deficiency for the Service of Subpoenas and for the Apprehension of Criminals, but in future the Salaries and expences of this description must be limited to the Sums which may be granted by the Assembly.

I have the Honor to be
My Lord,
Your Lordships Most obedient
Humble Servant

BATHURST

Lt General

The Earl of Dalhousie
G.C.B

Down^{g} St

7 Jan^{y} 1826

Endorsed
From
Earl Bathurst

Directing payment of suspended Salaries & discontinuance of certain offices.

CHIEF JUSTICE IN EXECUTIVE COUNCIL.

Address of Assembly, Upper Canada, 14 January, 1826.[1]

We, your Majesty's loyal and dutiful subjects, the Commons of Upper Canada, in Provincial Parliament assembled; beg leave most humbly to approach your Majesty upon a subject of the deepest interest, connected with the administration of public justice. We would humbly represent that the Executive Council is appointed by your Majesty, to advise his Excellency upon the affairs of this Province, and that the connection of the Chief Justice with it, wherein he has to advise his Excellency upon Executive measures, many of which may bear an intimate relation to the judicial duties he may have thereupon to discharge, is highly inexpedient, tending to embarrass him in his judicial functions, and render the administration of justice less satisfactory, if not less pure. Your Majesty's faithful Commons further humbly represent their deep sense of the expediency of rendering the judges of this Province as independent of the Crown and of the people as are the judges of England.

We therefore humbly beg, most gracious Sovereign, that you will be pleased to discontinue to impose upon the Chief Justice, a duty so incompatible with his judicial character, and so ill-suited to the present state of this Province, and that the judges, with the approbation of your Majesty, may be rendered as independent of the Crown and of the people, as are the judges of England.

JOHN WILLSON, *Speaker.*

Commons House of Assembly, 14th January, 1826.

[1] *Journals of Assembly, Upper Canada, 1825-26, p. 76.*

BATHURST TO MAITLAND.[1]

DOWNING STREET

8th June 1826

SIR,

I have laid before The King the Address of the Assembly of the Province of Upper Canada on the subject of the Administration of Justice and stating the inconvenience which they conceive to result from the appointment of the Chief Justice as a Member of the Executive Council. I have received His Majesty's Commands to acquaint you that it is highly expedient that the Governor should have the advice and assistance of the first Law authority of the Province, for his guidance in the Administration of his Government; that the greatest advantage has been derived throughout the Colonies from this assistance, and that it does not appear, that there is any thing peculiar in the State of the Province of Upper Canada, which should make it advisable that this system should be changed.

I have the Honor to be
Sir,
Your most obedient
Humble Servant

BATHURST

M General

Sir P. MAITLAND
K.C.B
&c &c

DOWNING STREET

Endorsed 8th June 1826.
from
EARL BATHURST

Has received the Address of the House of Assembly to the King upon the subject of the Administration of Justice, with reference to the appointment of the Chief Justice to the Executive Council–

His Majesty differs in opinion with the Assbly in thinking it highly exped[t] that the Chief Justice sh[d] be in the Executive Council.

CLERGY RESERVES.

ADDRESS OF ASSEMBLY, UPPER CANADA, 27 January 1826.[2]

We, Your Majesty's most dutiful and loyal subjects, the Commons of Upper Canada, in Provincial parliament assembled, most humbly beg leave to approach Your Majesty, to express our sentiments on a subject of deep interest to your faithful subjects of Upper Canada. We perceive by the provisions of an act passed during the last session of the Imperial Parliament, that Your Majesty

[1] *G. 62, pp. 158-159.*
[2] *Journals of Assembly, Upper Canada, 1825-26, pp. 107-108.*

is empowered to order the appropriation of a further allotment of land within this Province, for the support and maintenance of a Protestant Clergy, in lieu of that portion of the lands already set apart for the purpose (called the Clergy Reserves), which has lately been, or is about to be sold to the Canada Land Company.

We would most reluctantly appear to your Majesty as unfriendly to the cause of Religion, but when we consider that one-seventh of all the surveyed lands within this Province, is already, by an act passed in the 31st year of the reign of His late Majesty, appropriated to that object, and are of opinion, that the extent of the present reservation is injurious to the prosperity of the Colony. We feel a strong desire that no further appropriation may be made, but that your Majesty will be graciously pleased to submit to your Parliament the expediency of repealing so much of the late act as permits the said further allotment.

We further most humbly represent, most gracious Sovereign, that the lands set apart in this Province, for the maintenance and support of a Protestant Clergy, ought not to be enjoyed by any one denomination of Protestants, to the exclusion of their christian brethren of other denominations, equally conscientious in their respective modes of worshipping God, and equally entitled, as dutiful and loyal Subjects, to the protection of your Majesty's benign and liberal government. We therefore humbly hope, it will, in your Majesty's wisdom, be deemed expedient and just, that, not only the present reserves, but that any funds arising from the sales thereof, should be devoted to the advancement of the Christian Religion generally, and the happiness of all your Majesty's Subjects of whatsoever denomination; or if such application, or distribution should be deemed inexpedient, that the profits arising from such appropriation, should be applied to the purposes of education, and the general improvement of this province.

JOHN WILLSON,
Speaker.

Commons' House of Assembly,
27th January, 1826.

INDEPENDENCE OF THE JUDGES.

Dalhousie to Assembly, Lower Canada, 1 February, 1826.[1]

Relating to the Appointment of the Judges on the same footing as in England, and to a Pension to Judge Monk.

The Governor in Chief informs the Asembly that having, while in *England,* submitted and strongly recommended to His Majesty's Government a Memorial from the Chief Justice and Judges of this Province, praying that their Commissions may be granted to them during good Behaviour, and that a Provision be made for their Retirement after a certain number of years service, he received a Dispatch from the Earl *Bathurst,* His Majesty's Secretary of State for the Colonies, informing him that he would recommend to His Majesty, that the Appointments of the Judges in this Province should be placed on the footing on which corresponding Appointments are placed in *England,* provided that the Legislature of this Province should make a Provision

[1] *Journals of Assembly, Lower Canada, 1826, p. 52.* See *above p. 283.*

for their Retirement according to the scale which is adopted in *England.*

The Governor in Chief takes this opportunity of again bringing under the consideration of the House the expediency of encreasing the Pension granted to Sir *James Monk,* late Chief Justice of *Montreal,* and also of submitting to them a recommendation that some Provision be made for the Widow of the late Mr. Justice *Ogden;* and he communicates to the House, Copy of a Dispatch relating to these subjects, which he has received from His Majesty's Secretary of State for the Colonies.

DALHOUSIE.

Castle of *Saint Lewis,*
Quebec, 1st February 1826.

Memorial of Judges, 1826.[1]

To His Excellency George Earl of Dalhousie, Baron Dalhousie of Dalhousie Castle, Knight Grand Cross of the most Honorable Military order of the the Bath, Captain General and Governor in Chief in and over the Provinces of Upper and Lower Canada &c &c &c–

May it please your Excellency,

The undersigned would fail in their duty were they not to express the lively sense they entertain of your Excellency's attention to their request in transmitting their memorial praying that their General Commissions should be granted quamdiu bene se gesserint, and of the readiness with which Earl Bathurst was pleased to say "that he would not fail to recommend to His Majesty that the appointments of the Judges should be placed on the same footing as corresponding appointments are placed in England provided the Legislature of the Province would make a provision for their retirement according to the scale which is established in Great Britain.–" But though the interests of the Inhabitants of this Province, as well as those who have commercial relations with Canada, are much involved in this measure of liberal and enlightened Policy, the undersigned considering the result of the Proceedings in the late Session of the Provincial Parliament, and the opinions which prevail in one of the Branches thereof, are fully convinced that they can have no reasonable hope that their situations will ever be ameliorated or made independent by any Act of the Legislature of this Province– Their only reliance for an augmentation of Salary and for the enjoyment of their offices free from controul in respect to the duration of their Commissions and their retirement from public duties, is in their Most Gracious Sovereign; and they humbly pray that your Excellency will earnestly recom-

[1] *Lower Canada Sundries, S. 179, folio 119.* A copy of the Bill to secure the Independence of the Judges is to be found in the same volume. This Bill failed in the Council.

mend to Earl Bathurst that their Commissions be granted to them during their good behaviour, and that they be placed upon the *permanent* Revenue of His Majesty for their Salaries, and Pensions on their retirement from office.

Lower Canada 5 April 1826

J. SEWELL *Chief Justice*
of the Province of L: Canada

J Reid Ch J.KB
Montreal

F. C. Foucher J.B.R

George Pyke
J.K.B.

J. Kerr J B.R

Ol: Perrault J.B.R

Edw[D] Bowen
J.B.R.

ROMAN CATHOLIC BISHOP.

Bathurst to Law Officers.[1]

Downing Street

25 Feb[y] 1826.

Copy

Gentlemen,

19 Decr. 1825. No. 188 19 Decr. 1825.

I have the honor to transmit to you the Accompanying dispatches from Lieutenant General The Earl of Dalhousie respecting the form of appointment of the Roman Catholic Bishop in Canada, which See has lately become vacant by the death of M[r]. de Plessis, the appointment had been formerly made by adopting with the Royal Approbation the Coadjutor of the preceding Bishop nominated Cum futura successione and consecrated in Canada under the Authority of the Pope's Bull, doubts have however arisen, whether that mode was consistent with the Royal Prerogative and particularly with the Provisions of the Act 14. Geo. 3. Chap. 83, which permits free exercise of the Religion of the Church of Rome [in] Canada subject to the King's Supremacy as declared and Established by 1. Elizabeth Cap. 1. which last Statute Considers the King's Supremacy as essentially opposed to the exercise of any Authority by the Pope in any parts of the Dominion belonging to the Crown and Lord Dalhousie has recommended that the late Coadjutor who has been already consecrated, should be appointed Roman Catholic Bishop of Quebec by Letters Patent under the Provincial Seal, in obedience to a Mandamus under the Royal Sign Manual.

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[1] *Q. 177, pp. 70-71.*

I have therefore to request that you will take these Papers into your early consideration and report to me your Opinion whether the appointment of a Roman Catholic Bishop in Canada can legally be made under the Great Seal, or under the Provincial Seal under Special Instructions or Warrant from His Majesty.

I have &c &c

BATHURST

To

The King's Advocate
Attorney General &
Solicitor General.

LAW OFFICERS TO BATHURST.[1]

DOCTOR'S COMMONS

September 23rd 1826.

MY LORD,

We are honoured with Your Lordships Commands, signified in Your Lordships letter of the 25th February last, transmitting Dispatches from Lieut. General, the Earl of Dalhousie respecting the form of appointment of the Roman Catholic Bishop in Canada, which See has recently become vacant by the death of Mr. de Plessis.

And stating that the appointment had formerly been made by adopting, with the Royal Approbation, the Coadjutor of the preceding Bishop nominated *cum futura Concessione* and consecrated in Canada, under the Authority of the Pope's Bull. Doubts having however, arisen, whether that mode was consistent with the Royal Prerogative, and more particularly with the Provisions of the Act 14 Geo. 3. ch 83. which permits the free Exercise of the Religion of the Church of Rome in Canada, subject to the King's Supremacy as declared and established by 1 Eliz. Ch 1, which last statute considers the King's Supremacy as essentially opposed to the Exercise of any authority by the Pope, in any parts of the Dominions belonging to the Crown; And Lord Dalhousie having recommended, that the late Coadjutor, who has been already consecrated, should be appointed Roman Catholic Bishop of Quebec by Letters Patent under the Provincial Seal, in obedience to a Mandamus, under the Royal Sign Manual.

And Your Lordship is therefore, pleased to request, that We would take these Papers into consideration, and report Our opinion, Whether the appointment of a Roman Catholic Bishop in Canada, can legally be made under the Great Seal, or under the Provincial Seal, under Special Instructions, or Warrant from His Majesty.

In obedience to Your Lordships Commands,

We have the honour to report, that We are of opinion, that the appointment of a Roman Catholic Bishop in Canada, cannot legally be made, either under the Great Seal of this Kingdom, or under the Provincial Seal of Canada.

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[1] *Q. 177, pp. 72-75.*

The constituting a Bishop of the Catholic Church by Letters Patent, or Royal Warrant directed by the Governor of Canada, independently of the difficulties which arise from the general considerations, connected with this point, would be, as it appears to Us, by necessary implication, in derogation, and virtually in alienation, of the King's Supremacy in Canada, which is expressly reserved, and scrupulously guarded by the Provisions of the Statute 14th. Geo 3rd. Ch 83:—

The 5th. Section of that Statute does no more than guarantee to certain Subjects of His Majesty in Canada, the free exercise of the Religion of the Church of Rome, and to the Clergy of that Religion, the enjoyment of their accustomed dues and rights: But the express reservation of the King's Supremacy, coupled with the reference made to the Statute of Elizabeth, shews the intention of the Legislature that the Supremacy of the Crown, in Canada, should be preserved undiminished, as it exists in England, by the Law and Constitution of this Realm; And we think the appointment of a Catholic Bishop by the King would operate as a devolution from the Crown, of that Supremacy.

We have the Honor to be
My Lord,
Your Lordship's
most Obedient
Humble Servants

The Right Honourable
The Earl Bathurst
&c. &c. &c.

CHRIST: ROBINSON
Chs. WETHERALL
N. C. TINDAL

COLONIAL LEGISLATION.

Opinion of Attorney General, 27 March, 1826.[1]

To His Excellency The Right Honble George Earl of Dalhousie, Knight Grand Cross of the Most Honorable Military Order of the Bath, Captain General & Governor in Chief in & over the Province of Lower Canada, Vice Admiral of the same, &cr &cr &cr

May it please Your Excellency,–

I have been honoured with Your Excellency's Commands signified in Mr Secretary Cochran's Letter of the 25. Inst referring to me a bill passed by the

[1]*Lower Canada Sundries, S. 179, folio 78.* This Act was disallowed by the Imperial Government on the grounds that "it authorizes the solemnization of Marriages, Baptisms, and Burials by the Ministers of such Congregations of Protestant Dissenters. But His Majesty in Council cannot recognize the character of Ministers of dissenting Congregations as the qualification for exercising any civil or ecclesiastical rights. Even if the Marriage were to be considered only in the light of a civil Contract there is no sufficient reason why dissenting Ministers should be entrusted with the solemnization of it.

The Bill has further been deemed objectionable because, notwithstanding the attempt which is made to define the term "a dissenting Minister," it is obvious that under the provisions of this Bill evasions might readily be contrived by means of which Individuals might acquire the right of celebrating Marriage without really belonging to that class to which it is intended to confine the privilege. There is no provision for the punctual registration of the Licences to be granted to such Ministers nor for preserving the Marriage Registries nor for preventing fraudulent Erasures in them. The Bill does not define what is to be understood by the term— "a Member of the Congregation." For popular purposes the expression may be sufficiently precise but it is far too vague and indeterminate when considered as a component part of the definition of a strict legal right." *G. 16, pp. 67-69.*

Legislative Council & Assembly of this Province, intituled "An Act to provide "for Keeping Registers of Baptisms, Marriages, & Burials, for Congregations or "religious Communities of Protestant Dissenters;" upon which Your Excellency has been pleased to require my Opinion whether there be any sufficient Cause for withholding or reserving His Majesty's Assent to the said Bill.–

Having considered this Bill, I beg leave to state, that I am humbly of opinion that, by reason of the omission of an essential formality on the part of the two Branches of the Legislature by which it has been passed, this Bill is not susceptible of receiving His Majesty's Assent; and, if it were, the provisions contained in it are of a nature to make it fit that it should be reserved for the signification of His Majesty's pleasure thereon.

By the 42[d] Section of the Act 31 Geo: III. c. 31. under which the Legislature of Lower Canada exercises its powers, certain Acts passed by the Legislative Council & Assembly, it is required, shall, previous to any signification of the King's Assent thereto, be laid before both Houses of Parliament in Great-Britain; and it is declared that it shall not be lawful for His Majesty to signify his Assent to such Acts, 'till thirty days after the same shall have been laid before the said Houses, or to assent to any such Acts in case either House of Parliament shall, within the said thirty days address His Majesty to withhold his Assent from such Acts.– And by the same Clause it is enacted that no such Act shall be valid, unless the Legislative Council & Assembly shall, in the session in which the same shall have been passed, have presented to the Governor an Address or Addresses, specifying that the Act contains provision for some of the purposes in the said Clause specially described, and desiring that, in order to give effect to the same such Act should be transmitted to England, without delay, for the purpose of being laid before Parliament, previous to the signification of His Majesty's Assent thereto.–

Among the Acts in respect of which it is required that the formalities just mentioned should be observed are those "*containing any provisions which shall* "*in any manner relate to or affect the enjoyment* or exercise *of any religious* "*form or Mode of Worship.*"–

The Bill now referred to has for its professed object to authorize *Ministers of* every description of Congregations or Communities of Dissenters from the Church of England, and also of those from the Church of Scotland, to keep Registers of Baptisms, Marriages and Burials.– By implication, it admits in such Ministers a legal competence to solemnize Marriage, and confers on them the authority of Civil officers, under the Government, by enabling them to authenticate Marriages and furnish legal Evidence not only of them, but of baptisms and burials, the proof of which is made to depend on the Registers kept by them, & on Extracts or Copies of Entries therein.– These powers, I apprehend, plainly relate to and affect *the enjoyment and exercise* of the religious form or Mode of Worship of the persons contemplated by the Bill;—inasmuch as, besides being specially conferred for their ease and benefit in relation to their peculiar forms and Modes of Worship, they imply a recognition & sanction of these forms and Modes, and add to and enlarge, in most important particulars, the rights to which the persons professing them could lay claim. As the law now stands, the Ministers & Preachers of the Congregations referred to

are not supposed to be legally qualified to solemnize Marriage between Persons belonging to them, or to afford such Evidence of it as is required by law:— the intended effect of this Bill being to remove this disability, and to enable the Members of such Congregations to resort for Baptism & Marriage to their own Ministers, the Bill itself cannot, I conceive, but relate to & affect the *enjoyment & exercise* of the form and mode of Worship of the Persons in Question.– On this Ground, the presenting of an Address or Addresses to Your Excellency, by the Legislative Council & Assembly, as required by the 42 Sect. of the Act 31 Geo: III. c. 31. above cited, in order to enable His Majesty, if so advised, to sanction such a Bill, after its transmission to England, was, I am humbly of Opinion, a proceeding or formality of indispensible necessity, the omission of which would preclude the Giving of His Majesty's Assent to the Bill.—

Had this requirement of the Constitution of this Province been complied with, I should however, respectfully submit, that the provisions of the Bill, in my humble Opinion, are not called for, on the Ground of any real or alleged Grievance, and are, in themselves highly inexpedient and unfit to be adopted.

The Petitions which have Given occasion to the passing of the Bill, have been preferred by Wesleyan Methodists.– In these it is not even alleged or pretended that any conscientious scruples of the Petitioners would be affected by resorting to Clergymen of the Established Church of England, for the Ministration of Baptism & the solemnizing of Marriage, nor that they labour under inconvenience for the want of such Clergymen, the first & essential Ground, therefore, on which any legislative interposition on this subject could be applied for appears to be wanting.– When no cause of Grievance or hardship is alleged by the particular Class of Dissenters who have petitioned the Legislature, and when all other Classes observe silence as to any reason for legislative interposition in their behalf, there would not appear to be any Ground for the Extensive enactments contained in this Bill, which would embrace Dissenters of Every description, however objectionable their peculiar Tenets might be, and which, in their probable effects, would be likely to contribute greatly to the multiplication of religious divisions in a Country as yet happily in a considerable degree free from them. The advantages, indeed, present & prospective which might be expected to accrue to the Ministry referred to, from being entrusted with the Custody & Keeping of registers,– the permanence, weight, & influence which it would contribute to give them in their respective situations, could not but operate powerfully in producing & confirming divisions & Subdivisions in religious sects.—

The occasion, therefore, for passing any Bill for the purpose in contemplation at this time, may, I venture to believe, be very much questioned.– But any Bill for regulating the Keeping of registers of Marriages &c should, I humbly apprehend, be limited to the descriptions of persons legally competent to perform the Acts of which it is the object of the Registers to afford Evidence: it could never be intended that persons should be entrusted with Keeping registers of Marriages who are not legally qualified to solemnize Marriage. In this respect, the Bill I am humbly of opinion, assumes too much in taking it for granted, that the Ministers to which its provisions relate *are* Competent to solemnize

Marriage.– A power in them to do so must be derived from the French Law, as it obtained in this Province, at the time of the Conquest; no Legislative provision on this Subject having been since made. From this source, I am not aware, that any such authority could be derived; and the Provincial Legislature itself appears to have entertained the same opinion, for by an Act passed in the 44th Year of His late Majesty's Reign, intituled "An Act to confirm certain Marriages therein Mentioned," the Legislature, in confirming Marriages which had been solemnized by Protestant Dissenting Ministers, or by persons reputed to be such, expressly declares that its provisions shall not be extended to the confirmation of any Marriage which should be celebrated after the passing of that Act.– The Bill in question appears, therefore, to be particularly objectionable as being founded on a supposed legal capacity in dissenting Ministers of every description to solemnize Marriage, which capacity is not admitted, and by the Legislature itself, in passing the law just mentioned, has been assumed not to exist.–

The particular Provisions contained in the Bill, I am humbly of opinion, are also exceptionable, inasmuch as they would entrust the Keeping of registers of Marriages &c to persons of whose character, integrity, and fitness no sufficient assurance is required, or could be obtained, and in respect of whom there would exist neither superintendance nor controul.– The danger, risque, and hazard to which the important civil rights of His Majesty's Subjects, derived from Marriage, would be thus exposed are evident. The Authority which the Bill confides to the Quarter Sessions as to the licensing of Dissenting Ministers, I apprehend also to be objectionable. If a Licence were required, it should, I conceive, proceed from a different Department of the Government. The regulations likewise in the Bill as to the authentication of the Registers by the Clerk of the Peace, and the Evidence to result from them, I think particularly liable to objection, as establishing different rules on these heads from the subsisting law in its application to registers Kept by the persons to whom the Keeping of them is now entrusted, and as being at variance with the regulations contained in the Prov: Stat: 35 Geo: III. c. 4. intituled "An Act to Establish the form of Registers of Baptisms, Marriages, & Burials &a—the effect of which would be to Establish different laws to different Classes of His Majesty's Subjects, in relation to the same rights.–

Without trespassing further on Your Excellency's attention, by going more into detail, I will only beg leave to add that, on the Grounds above stated, it appears to me to be adviseable that the Bill in question should be reserved for the Signification of His Majesty's pleasure thereon.

All which, nevertheless, is Most respectfully submitted to Your Excellency's Wisdom, by Your Excellency's

Most obedient

humble Servant

J. STUART
Atty. General.

Quebec, 27th March, 1826.

CANADA TENURES ACT.

PROCLAMATION.[1]

DALHOUSIE, Governor.

GEORGE THE FOURTH, by the Grace of God of the United-Kingdom of Great-Britain and Ireland King, Defender of the Faith.– To all Our loving Subjects whom these presents may concern– GREETING: Whereas by an Act of the Parliament of Our United-Kingdom of Great-Britain and Ireland, passed in the sixth year of our reign, intituled, "An Act to provide for the extinction of feudal and seignioral rights and burthens on lands held *à titre de fief* and *à titre de cens* in the Province of Lower-Canada, and for the gradual conversion of those tenures into the tenures of free and common soccage, and for other purpose relating to the said Province,"[2] it is amongst other things enacted, "That whenever any person or persons holding of us as proprietor or proprietors, any fief or seigniory in the said Province of Lower-Canada, and having legally the power of alienating the same, in which fief or seigniory, lands have been granted & are held *à titre de fief* in *arrière fief*, or *à tître de cens*, shall by Petition to Us through the Governor, Lieutenant-Governor or person administering the Government of the said Province, apply for a commutation of and release from the "*droit de quint*" the "*droit de relief*" or other feudal burthens due to us on such fief or seigniory, and shall surrender into the hands of us, our heirs or successors all such parts and parcels of such fief or seigniory as shall remain and be in his possession ungranted, and shall not be held at aforesaid, *à titre de fief* in *arrière fief* or *à tître de cens*, it shall & may be lawful for us, or for such Governor, Lieutenant-Governor, or person administering the Government as aforesaid, in pursuance of our instructions, transmitted through one of our principal Secretaries of State, by and with the advice of the Executive Council of the said Province, to commute the "*droit de quint*" the "*droit de relief,*" and all other feudal rights & burthens due to us upon, or in respect of such fief or seigniory, for such sum of money or consideration; and upon such terms and conditions as to us, or to such Governor, Lieutenant-Governor, or person administering the Government as aforesaid, in pursuance of such instructions, and by and with such advice as aforesaid, shall appear, meet and expedient, and thereupon to release the person or persons so applying, his, her and their heirs and assigns, and all and every the lands comprized in such fief or seigniory, from the said *droit de quint, droit de relief*, and all other feudal burthens due or to grow due thereupon to us, our heirs or successors of whatsoever nature or kind for ever; and to cause a fresh grant to be made to the person or persons so applying of all such parts and parcels of such fief or seigniory as shall as aforesaid remain and be in his, her or their possession ungranted, and which shall not be held *à titre de fief* in *arrière fief* as aforesaid, or *à titre de cens*, to be thence forward holden in free and common soccage in like manner as lands are now holden in free and common soccage in that part of Great-Britain, called England, without its being necessary for the validity of such grant, that

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[1] *Quebec Gazette, Published by Authority, 20 April 1826.*
[2] *6 Geo. IV. cap. 59.*

any allotment or appropriation of lands for the support and maintenance of a Protestant Clergy, should be therein made any law or statute to the contrary thereof notwithstanding," and whereas in pursuance of the said Act hereinbefore in part recited, and in execution of the powers thereby in us vested, we have transmitted through the Right Honorable the Earl Bathurst, one of our principal Secretaries of State, having the Department of the Colonies, to the Right Honorable the Earl of Dalhousie, our Captain General and Governor in Chief in and over our said Province of Lower-Canada; our Royal Instructions for and concerning the commutation of the *droit de quint*, *droit de relief*, and all the feudal burthens due to us, whereof the commutation, in and by the said Act is provided for, and concerning the sum of money or consideration, terms and conditions, on which such commutation is to be granted and allowed according to the Provisions of the said Act. Know ye therefore, that for the purpose of making known our said Royal instructions in this behalf, and in order, that persons entitled to, and desirous of the benefit of the commutation provided for in and by the said Act, in what respects lands held of us, *à titre de fief*, may avail themselves of such benefit, We have thought fit with the advice of our Executive Council of our said Province, to issue, this our Royal Proclamation, hereby to publish and declare to our loving subjects whom the same may concern, that whenever any person or persons holding of us as proprietor or proprietors any fief or seigniory in the said Province, and having legally the power of alienating the same, in which fief or seigniory lands, have been granted and are held *à titre de fief* in *arrière fief*, or *à titre de cens*, shall apply for the commutation in and by the said Act provided for, in the manner therein-mentioned, and shall actually have paid into the hands of our Receiver General of our said Province, a sum of money equal to one-twentieth part of the value of such fief or seigniory; then and in every such case, our Governor, Lieutenant-Governor, or other person administering the Government of our said Province, shall and will with the advice of our said Executive Council in pursuance of the said Royal Instructions, proceed to commute all and every the *droit de quint*, *droit de relief*, and all other feudal rights and burthens, which thenceforward, if such commutation were not made and granted, would accrue and become due to us upon and in respect of such fief or seigniory and to release for the future such person or persons, his, her or their heirs and assigns, and all and every the lands comprized in such fief or seigniory from the several burthens aforesaid, and to cause to be made to such person or persons a fresh grant in the manner in and by the said Act hereinbefore in part recited prescribed; and in case such person or persons as aforesaid should not agree with the Governor, Lieutenant-Governor or person administering the Government of our said Province, acting by and with such advice as aforesaid, as to the value of any such fief or seigniory, and the amount of the sum to be paid in consideration of such commutation should not be determined by and between them then and in every such case, in pursuance of our said Royal Instructions, We do will & require, that our said Governor, Lieutenant-Governor or person administering the Government of our said Province, by and with such advice as aforesaid, do concur in the nomination and appointment of *Experts* for ascertaining the value of such fief or seigniory, according to the course of law in our said Province. Provided always, and we

do hereby declare, that such commutation so to be made and granted as aforesaid, shall not have the effect of extinguishing or affecting the recovery of any *droit de quint, droit de relief,* or other feudal rights and burthens, or any arrears thereof, previously accrued and become due to us upon and in respect of the fief or seigniory for which such commutation shall have been granted; but that all such *droit de quint, droit de relief* and other feudal rights, and burthens and the arrears thereof so accrued and become due to us before the making and granting of such commutation, shall be recoverable by the same remedies, and in the same manner and form as if such commutation had not been made or granted; and we do hereby expressly reserve to us, our heirs and successors, the power of revoking and altering from time to time, as occasion may require, the terms and conditions on which commutations are to be granted as aforesaid. In testimony whereof, we have caused these our Letters to be made Patent, and the Great Seal of our said Province of Lower-Canada, to be hereunto affixed,– Witness our trusty and well beloved George Earl of Dalhousie, Knight Grand Cross of the Most Honorable Military Order of the Bath, our Captain General and Governor in Chief, in and over our said Province of Lower-Canada, Vice-Admiral of the same, &c. &c. &c. At our Castle of Saint Lewis, in our City of Quebec, in our said Province, the fourteenth day of April, in the year of Our Lord, one thousand eight hundred and twenty-six, and in the seventh year of our reign.

D.

G.

Ls. Montizambert,
Actg. Prov. Secty.

CHURCH OF SCOTLAND.

Bathurst to Dalhousie.

Downing Street

6 June 1826.

My Lord

I have the Honor to acknowledge the receipt of Your Lordship's dispatch of the 24th of March last, transmitting Memorials from the different Congregations and Ministers of the Church of Scotland in Canada praying for pecuniary aid from His Majesty's Government, and recommending the same to my most favorable consideration. In reply I have to acquaint Your Lordship that I am of opinion it would be certainly desirable to grant Salaries to the Ministers of the Church of Scotland, and in the event of any Funds being placed at His Majesty's disposal by the Sale of Crown Lands in Lower Canada, I shall be very ready

[1]*G. 15, pp. 99-100.* For a legal opinion on the status of the Church of Scotland see *above p. 27-28.*

to entertain the application which you have recommended, but at present I can only express my regret that the want of means prevents me from complying with the Petitioner's request—

I have the Honor to be
My Lord,
Your Lordship's most obed[t]
Humble Servant

BATHURST

L[t] General
The Earl of Dalhousie
G.C.B.
&c &c &c

ALIENS.

Address of Assembly, Upper Canada, 13 January, 1826.[1]

We, your Majesty's dutiful and loyal subjects, the Commons of Upper Canada in Provincial Parliament assembled, humbly beg leave to approach your Majesty upon a subject of the most vital importance to this Province, and to represent to your Majesty, that a large portion of its inhabitants consists of persons who were born, or whose fathers, or paternal grandfathers, were born within the allegiance of the British Crown, but who were resident in the United States of America at and after the Treaty of 1783.

From the earliest settlement of Upper Canada, which commen[c]ed immediately after the peace of 1783, these persons, with the knowledge and approbation of your Majesty's Government, came in great numbers to this Province, and were immediately admitted, and uniformly considered to be entitled with no other restrictions than those imposed by the Provincial Legislature, by which they were disqualified from electing or being elected to the House of Assembly until they had resided seven years continually in the Province) to all the rights and privileges, and subject to all the duties, responsibilities, and obligations of natural born British subjects.

We would further most humbly represent, that the 30th Geo. 3d, cap. 27, was passed for the avowed purpose of encouraging such persons to come and settle in the Province of Quebec, and your Majesty's other North American Territories, and evidently contemplated their settling as freeholders, which, if they were aliens, they could not do without being naturalized; and that as the said statute contains no provision for the naturalization of such persons, and as there was no law for the naturalization of persons who were born in the King's allegiance, as those were whom it was principally the object of that statute to invite into these provinces, the said statute, according to a fair and liberal construction, implies that their natural allegiance had never been in anywise destroyed, forefeited, or dissolved, but that on the contrary, according to the common law principle of p[e]rpetual and double allegiance, as laid down by Bracton and other ancient authorities, and applied to the people of Normandy and other territories

[1] *Journals of Assembly, Upper Canada, 1825-26, pp. 74-75.*

in France, recognized by the court in Calvin's case, in the reign of James the First, and subsequently recognized by the judges in the Exchequer chamber, in the decision of the case of Marryatt and Wilson, notwithstanding they had been subjects of the United States of America, they still remained natural born British subjects.

We would also most humbly represent, that as the 31s[t] Geo. 3d, cap. 31st, was passed in the ensuing year, by the same Parliament, and dictated by the same spirit and policy for the improvement and benefit of this colony as the aforesaid 30th Geo. 3d, cap. 27, the said statutes should be considered in connection, and so construed as most to reconcile and promote the objects and provisions of each; and that therefore the term *"natural born subject of his Majesty,"* used in the said 31st Geo. 3d, cap. 31st, should be r[e]garded as having been intended to include persons of the same description as those who, by the statute of the preceding year, had been invited into these Provinces as settlers, and that this construction is strengthened by the consideration, that if this had not been the intention, while it was the avowed policy, of the Imperial Parliament to hold out peculiar encouragement to such persons to come into and settle in these Provinces, they nevertheless were by the very same Parliament absolutely and for ever debarred from enjoying the most valuable and important rights of British subjects, which, at the same time, were freely and fully granted to aliens by birth, upon their compliance with certain forms and conditions prescribed by the naturalization laws: That this construction is conformable, not only to the spirit of these statutes, and the avowed object in particular of the said 30th Geo. 3d, cap. 27, but also, to the uniform practice both of your Majesty's Government and of the Provincial Legislature: That such persons have been encouraged by your Majesty's Government to come and settle in this Province, have received grants of land from your Majesty, have been appointed to various offices of trust and honour, have been required to serve in the militia, as well during the late war with the United States of America, as in peace; and to perform various other duties as British subjects; and have continually held seats in the Legislature; and that various Provincial statutes have been passed upon the principle that they were, to all intents and purposes, British Subjects,

That the meritorious and loyal conduct, in defence of this Province, of such persons of this description as were called into actual service during the late contest with the United States of America, the gallantry with which they encountered the dangers, and the patience and cheerfulness with which they endured the privations of war, prove that they justly appreciate the rights which they have so long enjoyed, and are fully entitled to the confidence, protection, and paternal care of your Majesty's government; and that no danger need be apprehended to the Province from the aforesaid construction of the law, with respect to them.

That in all civil transactions in the Province, they have invariably been considered British subjects; that as such they have taken by grant, purchase, devise, marriage, and inheritance, and have held, conveyed, and disposed of land; that many of them have deceased, leaving land in the Province to others; that a very large proportion of all the cultivated land in the Province, either is now holden or has been held and transferred by them, without any question, until lately, as to their legal capacity to do so; and that now to regard them as aliens, contrary to the former construction of law, which for so long a period has uni-

versally prevailed and been acted upon, would, in this respect, as well as in others, be attended with great inconvenience, and produce incalculable confusion and trouble through the Province.

That as these persons have become connected in all the relations of social and domestic life with the other inhabitants of the Province, have for so long a period been invariably considered as British subjects, and have contributed by their industry and good order to the tranquillity and welfare, and by their bravery and loyalty to the security and defence of the Province, to reverse at this time the said construction of the law, with respect to them, would excite great dissatisfaction and alarm through the Province, and would tend to destroy all confidence in the security of civil rights, and in the certainty of the laws in general.

That as this construction of the law has, from the earliest settlement of this Province, been solemnly and repeatedly sanctioned by the practice of your Majesty's government, and by acts of the Provincial Legislature, which although submitted to your Majesty's government in England, according to the provisions of the 31st Geo. 3d, cap. 31st, have not been disallowed, it would be inconsistent with the honor and good faith which have always characterised your Majesty's government, and an act of manifest impolicy and injustice now to adopt a new and different construction, whereby they would be regarded as aliens.

That during the present session, his Excellency the Lieutenant Governor has, by message, informed the two houses of the Provincial Parliament, that, in consequence of the construction put upon the law, in a recent decision by one of the courts of law in England,[1] such persons would hereafter be exposed to the inconvenience of finding those rights denied which they have hitherto enjoyed; and that in the persuasion that they might be safely received and acknowledged as subjects, with no other qualifications than those which the Legislature of this Province has, from time to time, thought it expedient to impose, having earnestly pressed the subject upon the consideration of your Majesty's government, he has received your Majesty's express sanction to assent to an enactment which may afford relief to such persons; and has also been pleased to transmit an extract of a letter from the Right Honorable the Earl Bathurst, your Majesty's Principal Secretary of State for the Colonies, containing the opinion of your Majesty's government, that it would be advisable to secure to such persons the rights and privileges of British subjects.

That a bill has been sent down to your Majesty's faithful Commons, from the Honourable the Legislative Council, referring to said message, predicated upon the principle that such persons were aliens, and conferring upon them certain rights and privileges; but not according to the obvious intention of your Majesty's Government, as expressed in said message and extract, all the rights and privileges of British subjects, to wit, the rights of voting at any election of a member to serve in the House of Assembly, and of being elected at such election: which bill your Majesty's faithful Commons, after mature and solemn consideration of the law and justice of the case, have returned to the Honourable the Legislative Council, with an amendment, by which it is declared and enacted, according to the uniform construction of the law in this Province, that such persons have been, are, and shall be considered to be, to all intents and purposes, natural born British subjects.

[1]See *above pp. 234-235.*

That as it is uncertain whether such Bill, so amended, will pass the other branches of the Legislature, and as it is the duty of your Majesty's faithful Commons, whenever the rights of the people may be in danger, to omit no precautions for their security, they most humbly represent that some further measures should be adopted to prevent this new and alarming construction of the law from being enforced, to the prejudice, terror and disfranchisement of a large portion of the inhabitants of this Province, who have quietly and loyally confided in the security and certainty of the laws, as uniformly construed and administered for more than thirty years, and in the honor, good faith, and paternal care of your Majesty's government.

We would further most humbly represent to your Majesty, that there are also in this Province various other persons not natural born British subjects, who have not strictly complied with the provisions of those British statutes, under which they might have been entitled to the privileges of British subjects, and to whom, as their well-known loyalty and good conduct satisfactorily prove, it would be not only safe, but just and expedient, according to the recommendation of your Majesty's government, that all the rights and privileges of British subjects should be effectually secured.

That your Majesty's faithful Commons, anxious to extend to such persons all the rights and privileges which the Provincial Legislature is authorised constitutionally to confer, have passed a bill to secure to all persons domiciled in this Province, all the rights and privileges of natural born British subjects, subject nevertheless to the qualifications imposed by the laws of this Province, with respect to the right of voting and being elected, and have sent the said bill to the honorable the Legislative Council.

And that your Majesty's faithful Commons have felt it to be their duty to take some measures without delay, to obtain for such persons all the rights and privileges of British subjects, without restriction, which can effectually be done only by an enactment of the Imperial Parliament.

Wherefore, we humbly pray your Majesty to take these matters into your most gracious consideration, and to recommend to your Parliament the adoption of such measures as may effectually prevent the denial, by a new construction of the law, to the persons first mentioned, of rights which they have so long enjoyed without being questioned, and with the sanction of your Majesty's government, and the evils which would result from the application of this new construction to persons who, having owned land in this Province, are now deceased, or resident in a foreign country; and as may secure beyond doubt, to all persons resident in this Province, fully and absolutely, all the rights and privileges of natural born British subjects.

JOHN WILLSON, *Speaker.*

Address of Assembly, Upper Canada, 18 January, 1826.[1]

We, your Majesty's loyal and dutiful subjects, the Commons of Upper Canada, in Provincial Parliament assembled; beg leave humbly to approach your Majesty to represent, that from a recent change of Colonial policy, American citizens are discouraged from coming into this Province, as settlers, to live under your Majesty's paternal government, and this representation we are the more constrained to offer to Your Royal consideration, from the late and continued depression in the value of land in most parts of this Province. In the absence of commercial and manufacturing capital, land is, and for a length of time to come must be, the chief basis of public credit, and therefore, whatever tends to increase, or longer continue, the late and present lamentable depression in its value, (a depression the prolongation of which threatens much distress) calls, most gracious Sovereign, for those earnest representations which, in common with all your subjects, we feel assured will receive your Royal consideration.

Population, most gracious Sovereign, in the infant state of this colony, is most essential to the agricultural and landed interests, as well as to our general welfare and prosperity. With respect to the present population, we humbly represent, that after the establishment of this Province, many persons who were born in the allegiance of our late most gracious Sovereign, and their children, came into it, with their families, from the United States, to settle, being attracted by the superior fertility of our soil, the advantages of our climate, and the excellence of our laws and government, when liberally administered, and that under the wisest and happiest administrations of your Majesty's government, every liberal encouragement and invitation have been given to such citizens of the United States to settle in this Province, and renew their allegiance. Such settlers, we can satisfactorily assure your Majesty, are among your most useful and loyal subjects, and exemplified, during the late war, the most firm attachment to our Royal person and government, while the relative situation of the United States and this Province, and the smallness of the armies arrayed for its defence, from the suddenness of the war and the magnitude of the struggle in which your Majesty was so gloriously engaged in Europe for the liberty of other nations, as well as the safety of your empire, put their fidelity to the test in a degree rarely experienced in any other country.

This class of your Majesty's subjects served in common with the militia at large, who have already been the object of your gracious commendation; and we notice this circumstance with the higher satisfaction, because it justifies the enlightened views of the Imperial Parliament, which, in the thirtieth year of the reign of our late most gracious Sovereign, passed an act to encourage the settlement of this Province with such citizens from the United States, under the persuasion that they might with safety and advantage be allowed to renew their allegiance, and the expediency of continuing this policy in the future, is recommended by the happiest experience of the past.

Within these last few years, many thousands of families, with wealth and industry, instead of peopling the western territory of the United States, would have emigrated into this Province and added to our population and prosperity,

[1] *Journals of Assembly, Upper Canada, 1825-26, pp. 87-88.*

had they not been unhappily discouraged by a change of policy, which change is sensibly injurious to our interests, and inconsistent with that existing law to which we have above humbly begged your Majesty's attention. Persons seeking to establish themselves in this Province, from whatever nation on the earth they may come, will most gracious Sovereign, as experience has proved, become happy under your liberal and benign government, and attached to your illustrious house, and the more populous and prosperous this colony becomes, the more unalienably will it become related to the mother country.

We therefore humbly and earnestly represent, most gracious Sovereign, that it is expedient to renew and continue an encouragement to an emigration which has already afforded a population so eminently worthy of your Majesty's paternal government, and to allow such persons to settle under the provisions of the said 30th Geo. 3d, chap. 27, and to purchase land, subject, nevertheless, to those restrictions imposed by certain Provincial statutes, under which they are restrained for seven years from the exercise of those political privileges which render the British Nation the freest in the world.

The above emigration we regard as a desirable addition to what your Majesty has lately encouraged and assisted from Great Britain, and which last-mentioned emigration, most gracious Sovereign, we regard as a most gracious and acceptable policy, tending in an eminent degree to promote the prosperity of the Province.

JOHN WILLSON,
Speaker.

PROCEEDINGS ON NATURALIZATION BILL, UPPER CANADA 1826.[1]

To the Honorable the Commons House of Assembly.

The committee appointed to meet the conferees on the part of the honorable Legislative Council, and to confer upon the subject matter of the amendments made by your honorable house in and to the bill sent down from the honorable the Legislative Council, entitled " an act to confirm and quiet in the possession of their estates, and to admit to the civil rights of subjects, certain classes of persons therein mentioned," and also, upon the subject matter of the bill entitled " an act to secure to certain inhabitants of this Province, rights and privileges as British subjects," met at the time appointed, and were handed by them the subjoined resolutions, and informed that the honorable Legislative Council request a free conference with your honorable house on the subject.

Joint Committee-Room, 18th January, 1826.

Resolved– That the Legislative Council by their bill passed on the 28th day of November last, and sent down for the concurrence of [sic] House of Assembly, evinced their intentions to confer, without reserve, the rights, privileges, and immunities of British subjects upon all persons now resident in this Province, who have been formerly citizens of the United States, and have never been naturalised by any act of the British Parliament; and likewise, upon persons who have come from other foreign countries, and upon the reduced officers and discharged soldiers of foreign corps late in His Majesty's service.

[1] *Journals of Assembly, Upper Canada, 1825-26, p. 91.*

Resolved– That the bill was intended by this house to carry into complete effect the gracious intentions of His Majesty, as communicated to this house by his Excellency the Lieutenant Governor, in his messages of the 15th and 22d of November[1], and if passed into a law, would, it is still conceived, have completely secured those different descriptions of persons in all the rights, privileges, and immunities of British subjects and forever prevented them from being exposed to the inconvenience of having them called in question.

Resolved– That the amendments sent up by the Commons House of Assembly to the said bill, are, in the opinion of this house, at variance with the laws and established policy of Great Britain, as well as of the United States, and therefore, if passed into a law by this legislature, would afford no relief to many of those persons, who were born in the United States, and who have come into and settled in this Province.

Resolved– That this house, still anxious to carry into effect the messages of his Excellency of the 15th and 22d of November, is willing to concur with the Commons House of Assembly in such enactments as may accomplish that desirable object.

Mr. Rolph, seconded by Mr. Playter, moves that the report of the committee of conference with the honorable the Legislative Council, on the subject matter of the amendments to the bill entitled "an act to confirm and quiet in the possession of their estates, and to admit to the civil rights of subjects, certain classes of persons therein mentioned," sent down from that honorable house, and the bill entitled "an act to secure to certain inhabitants of this Province, rights and privileges as British subjects," be referred to the committee on the state of the Province to-morrow.

Which was ordered.

Message from Legislative Council.[2]

Mr. Boulton, Master in Chancery, brought down from the honourable the Legislative Council, a message, and having retired, the Speaker read the same, as follows:

Mr. Speaker,

The honourable the Legislative Council have appointed a committee of five members, who will be ready to meet a committee of the Commons' House of Assembly, in free conference, on the subject matter of the bill, entitled, "An Act to confirm, and quiet in the possession of their estates, and to admit to the civil

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[1]On 15 November 1825, Maitland sent a message to the Assembly, in which he summed up the difficulties of the situation in which aliens were placed. In conclusion he said: "Of all the persons thus situated, the greater part became inhabitants with the knowledge of the Government; between those and others it does not appear necessary to discriminate. In the persuasion that they might all be safely received and acknowledged as subjects with no other qualifications than those which the Legislature of this Province has, from time to time, thought it expedient to impose, the Lieutenant Governor has earnestly pressed the subject upon the consideration of His Majesty's Government, and has it now in his power to communicate to the House of Assembly that he has received His Majesty's express sanction to assent to an enactment which may afford relief to such persons as are now in the Province, and the Lieutenant Governor doubts not that a subject so important will receive the early and attentive consideration of the House of Assembly, *Journals of Assembly, Upper Canada, 1825-26, p. 10.* On 22 November, he sent down an extract of Lord Bathurst's dispatch of 22 July.

[2]*Journals of Assembly, Upper Canada, 1825-26, p. 103.*

rights of subjects, certain classes of persons therein mentioned," and of the bill, entitled, "An Act to secure to certain inhabitants of this Province, rights and privileges as British Subjects." The Committee of the honourable the Legislative Council will be ready for that purpose at three o'clock this day.

W. CAMPBELL,

Speaker.

Legislative Council Chamber,
25th January, 1826.

ADDRESS OF LEGISLATIVE COUNCIL, 27 JANUARY, 1826.[1]

To The King's Most Excellent Majesty

Most Gracious Sovereign,

We your Majesty's most dutiful and loyal subjects the Legislative Council of Upper Canada in Provincial Parliament assembled, beg leave to represent to your Majesty that We received with great satisfaction the Communication of His Excellency Sir Peregrine Maitland, Your Majesty's Lieutenant Governor of this Province, that He had received Your Majesty's express sanction to assent to such Legislative Enactment as may confer the civil rights and privileges of British Subjects upon such Citizens of the United States and other Foreigners, now resident in the Province, as are in truth Aliens, although they may have hitherto enjoyed without question the rights of subjects—

We further beg leave to represent to Your Majesty that in consequence of this gracious communication, We passed a Bill, by which we intended to confer without reserve the rights, privileges and immunities of British Subjects upon all persons now resident in the Province, who have been formerly Citizens of the United States, and have never been naturalized by any Act of the British Parliament, and likewise upon persons who have come from other Foreign Countries, and upon reduced Officers and discharged Soldiers of Foreign Corps late in your Majesty's Service, which was sent down in the usual manner for the concurrence of the House of Assembly—

We beg leave further to represent to Your Majesty that the said Bill was virtually rejected by the House of Assembly, and such Enactments proposed, as were in our opinion, at variance with law and fact, and inconsistent with the safety and welfare of the Province; and as there is no prospect that this Legislature will agree on any proper method of carrying Your Majesty's most gracious intentions respecting Aliens residing in this Province, into effect, We most humbly supplicate that Your Majesty will be graciously pleased to recommend to Your Parliament, to confer upon such American Citizens and other Foreigners, now resident in this Province, as are not subjects, all the rights and privileges of natives—and to pass such a naturalization Law, with respect to persons hereafter coming into the Province, as shall be adapted to our circumstances and situations, and applicable to the Citizens of the United States in common with other Foreigners.—

[1]*Q. 340, pp. 389-392.*

We beg leave to offer to Your Majesty our Grateful Thanks for the liberal policy which has been pursued by Your Majesty in affording encouragement and assistance to persons disposed to emigrate to this Province from the several portions of the United Kingdom, and particularly from Ireland, and in providing for their support, until by their own exertions, they become enabled to maintain themselves, and to contribute by their industry, to the prosperity of this, valuable Colony—

We beg also to assure Your Majesty that we have witnessed with great thankfulness the persevering and successful exertions of your Majesty's Government, in conducting and fostering the Military Settlement, by which a happy and contented population of not less than Twelve thousand persons, the greater number of whom have spent their earlier years in Your Majesty's Service, are industriously employed in cultivating a Country between the River Ottawa and Saint Lawrence, which was lately a Wilderness, and are adding greatly to the safety and prosperity of this part of Your Majesty's Dominions.—

We feel much pleasure in expressing our confident assurance that the liberal policy which has thus been pursued by Your Majesty, will find an ample reward and the most powerful motives to its continuance in the additional strength and security which it confers upon a Colony ever distinguished by the favor of Your Majesty, and of Your Majesty's Royal Father, our late Venerable Sovereign, in the impulse which it imparts to the Commercial and agricultural interests of the Colony, and in the gratifying spectacle which it exhibits of many thousands of Your Majesty's subjects living in happiness and plenty, and in the dutiful obedience to the Laws, when, if they had remained in the United Kingdom, they might, under less favorable circumstances, have been an incumbrance, upon society instead of promoting its peace and welfare—

Legislative Council
Twenty Seventh day of January 1826

Wm CAMPBELL
Speaker.

Reply of Lieutenant Governor, 30 January 1826.[1]

Gentleman of the House of Assembly,

I will transmit to His majesty your address on the subject of Civil rights of certain inhabitants of this province, which must necessarily be accompanied with an expression of my regret that His Majesty's very gracious recommendation in behalf of those persons has proved so ineffectual. I shall not have it in my power to explain to His majesty's government upon what grounds, that is called a new construction of the law, which declares American citizens not to be entitled to all the privileges of natural born British subjects, and more especially in this province, in which public declarations that they were not so entitled, had proceeded, many years ago, from the House of Assembly.

It is just to the Assembly that I should make them aware that the conduct and opinions of the government of this province, with respect to persons removing into it from the United States, from the earliest period of the settlement of the colony, as manifested by their public acts, shall be made fully known to His Majesty's government.

[1] *Journals of House of Assembly, Upper Canada, 1825-26, p. 117.*

PROCEEDINGS IN COUNCIL.[1]

3rd February 1826–

. . . . . .

The Executive Council having considered with great attention Your Excellency's reference of the 1st Instant accompanied with Earl Bathurst's Despatch, of the 22nd July 1825[2] on the subject of conferring by Legislative enactment, the rights and privileges of British subjects upon such Citizens of the United States and other Foreigners as are now resident in this Colony and requesting that the Board would submit the heads of such enactments as Your Excellency, should think it would be expedient to pass in regard to the naturalization of Foreigners who may hereafter arrive in the Province most respectfully submit

That the Council is painfully aware of the reception given by the House of Assembly to the gracious offer of His Majesty's Government communicated to that Body in Your Excellency's Messages of the 15th and 22nd November, and the doctrines promulgated and maintained by their Votes, resolutions, and enactments, which are not only in opposition to Law and fact, and the established policy both of Great Britain, and the United States, but extremely dangerous to the peace and Security of this Province– and as there is no prospect that the different Branches of the Legislature will agree in any method of carrying His Majesty's Gracious intentions, respecting Aliens residing in this Province into effect, it appears more than ever expedient to appeal without delay to the Imperial Government.

That in as far as respects Emigrants from the United States of America, many causes combine to perplex the question of their Alienage which do not apply to other Foreigners such persons exhibit the same manners and features and speak the same language, with our own people, and cannot therefore be distinguished, consequently hundreds may come into the province and purchase real Estate without the Knowledge of the local Government, so that when the Constitutional Act of the 31st of His late Majesty King George the 3d Chapter 31st came into operation the Executive Government of Upper Canada, had no means of ascertaining in many cases who had, or had not the rights and privileges of British Subjects without entering into a minute investigation of the claims of numerous Individuals which during a period of peace and tranquillity appeared altogether inexpedient, if not impracticable and at every election the same difficulty must necessarily occur.

That since the late War, the situation of persons who have come from the United States, has frequently become matter of Consideration, and the great Number of such who declared for the Enemy after the commencement of Hostilities induced His Majestys Government on the restoration of peace to restrain by special instructions to this Government emigration from that Country for although it might have appeared—not unreasonable, to give a preference, for a time to persons coming into this Colony from the United States, who had spent the greater part of their lives under Monarchical institutions and in obedience to the British Crown, and who, induced by former associations might desire to return to their allegiance, the continuance of such a policy, it is humbly

[1] *Upper Canada, State Book, H., pp. 195-202.*
[2] See *above p. 272.*

submitted to Your Excellency, might in future, endanger the safety of the Province, when more than a generation has elapsed since the revolutionary War and when all who would now avail themselves of such preference, must have grown up under a Republican Government and have contributed their Services as subjects of that Government, to a War, of which it seemed the principal object to dismember these provinces from the British Crown.

That in submitting the heads of a Bill to the consideration of Your Excellency, not merely to confirm, and grant the rights and privileges of British Subjects on all Foreigners now resident in the Province but also such provisions, as may be deemed necessary to regulate future emigration, the Council see no reason to make any distinction between persons coming from the United States and other Foreigners, nor can they refrain from expressing their doubts of the expediency of encouraging Emigration in future into this Colony, except from the British Dominions, as its surface is far less extensive than has commonly been supposed, and as the Waste Lands of the Crown, capable of improvement, will very soon be occupied by the natural increase of the present Inhabitants, and the continuance of that Emigration from the United Kingdom which His Majesty's Government has with so much wisdom and success promoted and which adds so much to the Security and Welfare of this Province–

The Council most respectfully recommend that in regard to Aliens residing in the Province, the Bill framed by the Legislative Council, and sent down for the concurrence of the House of Assembly may form the basis of any Act that may be deemed necessary, to confer upon them the rights and privileges of British Subjects, With respect to the future the following provision will it is believed be found sufficient

That all Emigrants subjects of Foreign States hereafter removing into this Province shall after residing seven years and taking the Oath of Allegiance and abjuration in His Majesty's Court of King's Bench enjoy the same rights and privileges as persons naturalized in England. Repealing at the same time the 13th Geo. 2nd Chap. 7 and the 30th Geo–3rd Chap. 27– which are totally inapplicable to present times and circumstances

The Council has great satisfaction in expressing most earnestly their entire concurrence in the views of Your Excellency, respecting the importance of taking immediate steps to found an University in this Province–

The population and circumstances of the Colony call for such a measure, were there no additional inducement, such as Your Excellency has adverted to, and the Council are convinced, that if by any exertion, in the power of the Government, a beginning can be at once made, so that the Youth now growing up in the Province, shall have an opportunity of receiving their education under Tutors, not merely eminent for their learning, but for their attachment to the British Monarchy, and to the Established Church, the evil to which Your Excellency has alluded, and which is becoming really alarming would be most effectually checked by means not in their nature violent but on the Contrary producing infinite advantage, to the morals and happiness of Society

The Council are fully persuaded that the effects of the University, even on a moderate scale, but possessing sufficient recommendations to attract to it the Sons of the most opulent Families, would soon be visible in the greater intelli-

genced and more confirmed principles of Loyalty of those who would be called to the various public duties of Magistrates and Legislators, and in the Members of the learned Professions, whose principles and conduct have inevitably so great an influence in Society

It is quite evident that such an Institution in alliance with the Church, would tend to establish a most affectionate connexion, between this Colony and the Parent State, and become a Nursery, to the various professions, and from its natural relation with an increasing Clergy, would gradually infuse into the whole population, a tone and feeling entirely English, and by a judicious Selection of Elementary Books issuing from its Press, render it certain, that the first feelings sentiments and opinions of the youth should be British

The founding of an University the Council believe to be the most important step in the improvement of the province that can possibly be taken, it will complete the System of Education now in operation throughout the Colony and it is indeed so essential to our future advancement that the Board cannot but indulge the hope of soon beholding it in progress from Your Excellency's wise endeavours, and when it shall be added to the many benefits already conferred by Your Excellency on Upper Canada future generations will retain with blessing and praise, Your Excellency's administration in grateful remembrance–

All which is respectfully submitted

(Signed)

Wm CAMPBELL C.J–

(Signed) P.M.

BATHURST TO MAITLAND.[1]

DOWNING STREET

August 31: 1826.

SIR,

I have the honor herewith to transmit to you an Act passed in the last Session of Parliament entitled. "An Act to amend so much
7. Geo. 4. Cap. 68. "of an Act of the Thirty first year of His late Majesty as relates to "the Election of Members to serve in the Legislative Assembly of "the Province of Upper Canada.

You will perceive that, by this Statute, Parliament has enabled Persons naturalized by any Act of Assembly in Upper Canada, to sit in either House of the Provincial Legislature, and to vote for Members of the Assembly. His Majesty's Government proposed to Parliament this measure, in the confident expectation that it would effectually allay the dissensions which have recently been excited in the Province on this subject. But considering the great importance of this alteration of the Law, and fully aware of the delicacy of the questions to which it might possibly give occasion, they deemed it right to qualify the proposal, by suggesting the Provision, which requires, that every naturalization Bill should be suspended for the signification of His Majesty's pleasure.

[1]*G. 62, pp. 266-275.*

Under these circumstances it appears highly necessary that you should be apprized of the conditions on which His Majesty's Government will be disposed to admit Aliens in Upper Canada, to all the privileges of natural born subjects. I am very unwilling that any misconception on this subject, should impose on His Majesty the necessity of disallowing any Bill which the Assembly might pass.

You will therefore understand that it will not be possible to assent to any Acts declaratory of the General rule of Law which appear to have been contended for. The subjects of the United States of America whether born before or after the treaty of peace of 1783, are Aliens, and must, in point of Law, be regarded in that character.

Neither will His Majesty confirm any Act for establishing any general rule, for the naturalization of Aliens who may hereafter repair to the Province. The Statute 13th Geo: 2. Cap:[1] has already regulated the manner in which such persons may require the Privileges of English Birth; and if those regulations require revision, it will be the Office of Parliament to review and alter them.

The only measures to which His Majesty's Government are at present prepared to assent, are retrospective; and such as are requisite to relieve the actual Inhabitants of the Province, from the difficulties in which, from mere inadventure, they have been involved. It will be fit therefore that the Enactments of the Provincial Legislature should be confined to the case of those persons who had their domicile and settled place of abode in Upper Canada at the time of the passing of this Act of Parliament.

Those persons may be divided into two classes. First, such as had had their settled domicile in the Province for 7 years previously to the passing of this Act: and Secondly, those who were, at that time, bonâ fide domiciled; but without having completed a residence of 7 years. The first of these Classes might properly be invested at once with the character of naturalized subjects. The second Class, should not be admitted to that privilege until the term of 7 Years residence was complete. In either case, it will be necessary that the person to be naturalized should first take the Oath of Allegiance. For that purpose, some proper Persons should be authorized to administer it; and they should be sufficiently numerous, and so distributed over the Country, as to render the attendance upon them convenient to the parties by whom the oath is to be taken. Some method must be devised for keeping an accurate Registry of the Persons thus admitted to the privileges of Naturalization; and that Registry should contain every particular necessary for identifying the parties. A reasonable period should be fixed after which the oath is not to be administered. The Act by which Aliens are admitted to these privileges should distinctly declare, that the acceptance of Naturalization would be deemed a renunciation of allegiance to any foreign State or power.[2]

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[1]Cap. 7, see *above p. 6*
[2]Compare with *Horton to Maitland, 6 July, 1827, below, p. 362.*

The Provisions for carrying these purposes into effect, should form the subject of a distinct Act, which should, if possible, be unincumbered with any question respecting the descent and alienation of Lands formerly held by deceased Aliens, who lived in the Province under the mistaken supposition that they were entitled to the privileges of English Birth. It is manifest that this latter subject will give birth to questions of great difficulty; and I am not prepared to say, how far his Majestys Government would be disposed to confirm any Act, which might be passed for the relief of persons, claiming by descent or purchase, from such Aliens– That question however may very properly be left, in the first instance, to the consideration of the two Branches of the Provincial Legislature; with the assurance that His Majesty will not be indisposed to relieve those who have been the innocent sufferers from the prevailing misconception on this subject, if any just and practicable method can be devised for that purpose.

You will communicate the substance of this Despatch to the Legislative Council and Assembly, observing of course every requisite precaution not to infringe the constitutional privileges of those Bodies, either in the substance, or in the form, of the communication.

I have the honor to be

Sir

Your most obedient

humble Servant

BATHURST

Major General
Sir Peregrine Maitland K.C.B.
&c &c &c

Endorsed

Downing Street 31 August 1826

From Earl Bathurst–

Transmitting an Act of the Imperial Parliam[t]. passed in the last Session– Admitting Persons naturalized by the Legislature of U. Canada to be elected and to vote at the Election of Members of the Assembly– *American Citizens* born as well before as since the Treaty of Peace of 1783, who may have settled in Upper Canada, are Aliens in point of Law.

IMPERIAL STATUTE, 7 GEO IV CAP LXVIII.[1]

An Act to amend so much of an Act of the Thirty first Year of His late Majesty, as relates to the Election of Members to serve in the Legislative Assembly of the Province of *Upper Canada*.

[26th *May* 1826.]

31 G. 3. c. 31. 'Whereas by an Act passed in the Thirty first Year of the Reign 'of His late Majesty King *George* the Third, intituled *An Act to* 'repeal certain Parts of an Act passed in the Fourteenth Year of His 'Majesty's Reign, intituled "An Act for making more effectual Pro- 'vision for the Government of the Province of* Quebec *in* North §4. 'America," *and to make further Provision for the Government of the* 'said Province, it is amongst other Things enacted, that no Person 'shall be summoned to the Legislative Council in either of the 'Provinces of *Upper Canada* and *Lower Canada* who shall not be 'of the full Age of Twenty one Years, and a natural born Subject of 'His Majesty, or a Subject of His Majesty naturalized by Act of the '*British* Parliament, or a Subject of His Majesty having become such §22. 'by the Conquest and Cession of the Province of *Canada;* and it is 'thereby further provided, that no Person shall be capable of voting 'at any Election of a Member to serve in the Legislative Assembly 'in either of the said Provinces of *Upper Canada* or *Lower Canada,* 'or of being elected at any such Election, who shall not be of the 'full Age of Twenty one Years, and a natural born Subject of His 'Majesty, or a Subject of His Majesty's naturalized by Act of the '*British* Parliament, or a Subject of His Majesty having become such 'by the Conquest and Cession of the Province of *Canada:* And 'Whereas it is expedient that Persons naturalized by any Act of the 'Legislative Council and Assembly of the Province of *Upper Canada,* 'assented to by His Majesty, His Heirs or Successors, should be 'enabled to be summoned to the Legislative Council of the said 'Province of *Upper Canada,* and of voting at the Elections of Mem- 'bers to serve in the Legislative Assembly of the said Province, or of 'being elected at any such Election;' Be it therefore enacted by the King's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That all Persons naturalized by any Act of the Legislative Council and Assembly of the Province of *Upper Canada,* assented to by His Majesty, His Heirs or Successors, shall henceforth be and be deemed competent in the Law to be summoned to the Legislative Council of the said Province of *Upper Canada,* and to vote at the Elections of Members to serve in the Legislative Assembly of the said Province, and to be elected at any such Election.

Persons naturalized in Upper Canada may be summoned to Legislative Council, and vote at Elections.

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[1]*Imperial Statutes at Large, Vol. X, p. 796.*

Naturalization Bills not to have Effect till they have received His Majesty's Assent.

II. Provided nevertheless, and be it further enacted, That whenever any Bill which has been passed by the Legislative Council and by the House of Assembly in the said Province of *Upper Canada*, for the Naturalization of any Persons or Person, shall be presented for His Majesty's Assent to the Governor or Lieutenant Governor of the said Province, or to the Person administering His Majesty's Government therein, such Governor or Lieutenant Governor or Person administering the Government, shall and he is hereby required to reserve every such Bill for the Signification of His Majesty's Pleasure thereon; and no such Bill shall have any Force or Authority within the said Province of *Upper Canada* until the Governor or Lieutenant Governor, or Person administering the Government, shall signify, either by Speech or Message to the Legislative Council and Assembly of the said Province, or by Proclamation, that such Bill has been laid before His Majesty in Council, and that His Majesty has been pleased to assent to the same; and no such Bill shall have any Force or Authority within the said Province unless His Majesty's Assent thereto shall have been so signified as aforesaid, within the Space of Two Years from the Day on which such Bill shall have been presented for His Majesty's Assent to the Governor, Lieutenant Governor or Person administering the Government.

To be signified as herein mentioned.

LOWER CANADA, SUPPLY BILL.

Resolutions of Assembly, 21 March, 1826.[1]

It is expedient to adhere to the determination of the House to vote upon all the Sums necessary for paying the Expenditure.

1. *Resolved*, That it is the Opinion of this Committee, That it is expedient to adhere to the determination of the House, as recorded in its Votes and Proceedings on the subject of the Civil Expenditure of the Government of this Province in One thousand eight hundred and ten, One thousand eight hundred and nineteen, One thousand eight hundred and twenty-one, One thousand eight hundred and twenty-two, One thousand eight hundred and twenty-three, One thousand eight hundred and twenty-four, One thousand eight hundred and twenty-five, and during the present Session, to vote upon all the necessary Sums for paying the said Expenses, and to renew its Resolutions of the Twelfth March One thousand eight hundred and twenty-one, Twelfth January One thousand eight hundred and twenty-two, Seventh March One thousand eight hundred and twenty-three, Second March One thousand eight hundred and twenty-four, and Thirteenth March One thousand eight hundred and twenty-six, in so far as they are opposed to the exclusive application of any part of the Public Revenue to particular Services without the consent of this House.

[1] *Journals of Assembly, Lower Canada, 1826, pp. 335-336.*

The Statute 18th Geo. III. Ch. 12 declares that Colonies having a Representation cannot be taxed without the consent of their Representatives.

2. *Resolved*, That it is the Opinion of this Committee, That the Statute of the Eighteenth *George* the Third, Chapter Twelve,[1] has not conferred any new rights upon the Inhabitants of the British Colonies, but is a declaratory Act, the enactments whereof recognize and consecrate the Constitutional Maxim, that the Colonies having a Representation, have an inalienable right not to be taxed without the consent of their Representatives, and that to the Legislature alone appertains the right of distributing all Monies levied in the Colony.

That Act and a number of others, and the claims of the Colonies having a Representation, have established a uniform Public Colonial Law under which they have exercised a control over their Expenditures.

3. *Resolved*, That it is the Opinion of this Committee, That the said Act, as well as a multitude of other Acts of the British Parliament which enounce the same Principles, and the Acts and constant claims of the British Colonies which have enjoyed a Representative System, have established a Public Colonial Law uniform for them all, under which they have prospered, by virtue of which their Legislatures have annually distributed the Revenue and exercised an effectual and necessary control over the Expenses of their Administration.

This Province ought the more to enjoy that right as it is the only one for which the Imperial Parliament does not pay the Civil Expenses.

4. *Resolved*, That it is the Opinion of this Committee, That there is the less reason to maintain that this Province ought not to enjoy that Right, as it is the only one of the *North American* Colonies for which the Imperial Parliament is not every year called upon to vote a great part of the Expenses of the Civil Government. That this House are yet willing, as they have always been, to grant all the Sums towards the necessary Expenses of the Administration of Justice, and the Support of the Civil Government, provided they have a just control over the whole Revenue.

The House being called upon, from the insufficiency of the Funds, to supply the Sums necessary to cover the whole Expenditure, it has the right of making such conditions as the interest of Country may require.

5. *Resolved*, That it is the Opinion of this Committee, That even assuming (a proposition which nevertheless this House do formally reject) that the Revenue applicable to the payment of the Expenses of the Civil Government and of the Administration of Justice may legally be distributed by any other Authority than that of the Legislature, if they were sufficient to defray the whole of those Expenses, the claim set up by the present Administration to exemption from the effectual and necessary control of the Assembly in the distribution of that portion of the Public Revenue is by so much the more ungrounded, as in consideration of the acknowledged insufficiency of those Funds, the House of Assembly being called upon to supply considerable additional Sums, indispensably necessary for covering the whole Expenses of the Civil Government and of the Administration of Justice, they have the right of annexing to their Grant such conditions and limitations as the Interests of the Country appears to them to require.

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[1] *Colonial Tax Repeal Act*—which recites that "Whereas Taxation by the Parliament of *Great Britain*, for the Purpose of raising a Revenue ... has been found by Experience to occasion great Uneasiness and Disorders among His Majesty's Faithful Subjects ... the King and Parliament of *Great Britain* will not impose any Duty, Tax or Assessment whatever ...; except only such Duties as it may be expedient to impose for Regulation of Commerce; the net Produce of such Duties to be always paid and applied to and for the use of the Colony, Province or Plantation in which the same shall be respectively levied ..."

DALHOUSIE'S SPEECH ON PROROGATION, 29 MARCH 1826.[1]

The Governor's Speech.

When I met you at the opening of this Session, I stated to you in general terms the prosperous circumstances of the Province, and the evident necessity that existed for measures to encourage the disposition of the People to Industry and public Improvement, to secure and to encrease the value of Property, and to facilitate the Administration of Justice in this encreasing Population.

I received the most pleasing assurances that I should have your support and cooperation on all matters tending to those desirable ends, and it is therefore with the deepest regret that I now find my hopes disappointed upon the most important subjects which I pressed upon your consideration.

I feel pleasure, however, in acknowledging the laborious attendance of both Houses, and the attention you have given to some of those Measures, which, though not yet perfected, I still shall entertain the hope of seeing accomplished.

Gentlemen of the Assembly,

I had been led to believe, and His Majesty's Government had been told, that the differences which had so long subsisted between the Legislative Bodies on Financial Matters had been amicably settled; it is now seen, however, that the long asserted Claims from which those differences arose were only clothed in a new form, and maintained; and that the Act of Supply which passed last year was founded in misconception and misunderstanding.

Early in last Summer His Majesty's Secretary of State addressed a Dispatch to the Lieutenant Governor, (then administering the Government in my absence,) forcibly pointing out the objections to that Bill, and prohibiting His Majesty's Representative from sanctioning any similar measure in future. Anxious to avoid the necessity of publishing these Instructions, I made them fully known to several Members who take a lead in the Affairs of the Legislature, in the hope that some Measure of Accommodation might be adopted more conformable, than the Act of Supply of last year, to the sentiments and views of His Majesty's Government.

Finding, however, that all my endeavours to attain that happy termination were about to prove unavailing, I felt it my duty to place that Dispatch before you. As it now stands recorded upon your Journals, I have no hesitation in stating to you that I must adhere to the Orders and Instructions it contains, until they are recalled by His Majesty's Government; and that until then I must continue to adopt the forms of the Accounts and Estimates laid before the Provincial Parliament in this Session, shewing to you one Branch of the Revenue for your Information, and the other Branch for your Appropriation.

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[1]*Journals of Assembly, Lower Canada, 1826, pp. 371-372.*

Under the circumstances in which I am now placed, I think it my duty to accept of those Grants of Money which have been specially recommended by His Majesty's Commands, and those also relating to Schools and Charities; for these I return you thanks in His Majesty's name; but as the Aid required in Support of the Civil Government and the Administration of Justice has not been granted in a way in which it could be passed into a Law, I think it equally my duty to reserve all other Bills of Appropriation, for the signification of His Majesty's Pleasure upon them.

.....

APPLICATION OF PROVINCIAL REVENUE.

Bathurst to Dalhousie.[1]

Downing Street
9th June 1826.

My Lord,

I have had the Honor of receiving Your Excellency's despatch of the 3d April and I very much regret to find you have so little reason to expect that you will be able to come to any understanding with the Legislative Assembly short of compromising the principle at issue between you. In my despatch of the 11th Sept. 1821 to which Your Lordship has referred, I expressed my anxious wish, that some course could be adopted, by which these differences might be avoided; but I then felt, and I continue to feel that the Right of the Crown to have the appropriation of the Crown Revenue, is one which cannot be unconditionally surrendered– The Right is unquestionable and the assertion of it is not only desirable as affording the best means of coming to some adjustment for the establishment of a permanent Civil List, but necessary in order to prevent, in the absence of such an arrangement the whole Civil and Judicial establishment of the Province and the Fortunes of all individuals in official situations becoming Annually Subject to the Will and pleasure of the Legislative Assembly– I have therefore the Honor to communicate to Your Excellency His Majesty's approbation of your conduct in adhering to the instruction which you had received on this important subject– It remains for me to express my hope that the Executive Council will not have occasion to advise Your Excellency to apply any of the unappropriated Revenue raised under the Provincial Acts, to relieve the Individuals who may unavoidably suffer from the measures adopted by the Legislative Assembly– The necessity of the case may

[1] *G. 15, pp. 109-112.*

justify it, but you must be well aware that the application of this Money will stand on a much less satisfactory ground than that on which the application of the Crown Revenue can be maintained.

I have the Honor to be
My Lord,
Your Lordship's most obedient
Humble Servant

BATHURST

Lt General
The Earl of Dalhousie
G.C.B.

Endorsed 9th June 1826

From The Earl Bathurst

Acknowledges a rect. of Despatches announcing close of last Session of Provl Parl.

Bathurst to Dalhousie.[1]

Downing Street

24th October 1826

My Lord,

I have taken into my most serious consideration your Excellency's several Dispatches which relate to the unhappy differences which exist between you and the Legislative Assembly and it is my duty to give your Excellency fresh instructions which may guide you in your conduct at the approaching Session of the Provincial Legislature.

You will in the first place and above all things understand that the appropriation by the Crown of the Revenues of the Crown is so necessary to maintain the independence of the Judicial and Civil Authorities of the State which but for those Revenues would be subject to the annual Votes of the Legislative Assembly that you will on no account give your assent to any Bill which either gives or assumes a right on the part of the Legislative Assembly to make any appropriation of those Revenues–

But in firmly maintaining that Right and having it generally understood that you have neither the liberty nor the wish to act otherwise– you will not think it necessary to advance the assertion of this Right in your Speech at the meeting of the Provincial Legislature, such an assertion of the right in the outset must provoke the Assembly to dispute it, and embark you at once in all the embarrassments of a contest–

The course therefore which it will be advisable for you to pursue is to confine your application for money simply to certain items for which you have not otherwise specially provided taking no notice of those other charges for which provision will have been otherwise made– You will have an Estimate prepared

[1] *Q. 176 1-2-3 A, pp. 123-127.*

of the amount of each of these items for which you apply and you will direct that this Estimate be laid in the usual manner before the Assembly– It will be for the Assembly to deal with that Estimate as they think proper–

The Leading Members of the Assembly are probably too much interested to dispute the right which I understand you recently exercised to pay the charges of the Legislature &c &c but if there should be an attempt to do so you will at once declare that you will in future confine yourself to the disposal of the limited fund over which you have an absolute controul–

Under these circumstances therefore the position in which you will be placed with respect to the Assembly will be this– If they vote only part of the Estimate which you will have laid before them taking no notice of the expenditure for which you will have yourself provided and for which therefore you will not have applied to them, you will have practically maintained the right of the Crown to appropriate the Crown Revenue, while the Assembly will have made a legitimate exercise of their functions without being constrained formally to retract pretensions which when once advanced every popular Assembly must feel a difficulty in formally retracting– Even an absolute refusal of every item would neither endanger the principle of the right claimed by the Crown nor practically reduce you to a difficulty of upholding it: for tho' all these charges were cast upon the Government means might be found to defray them–

The question therefore with respect to these Rights can be only brought on by the Assembly calling either for an Account of the manner in which the Crown Revenues, specially so distinguished have been appropriated, or for a more general account of the manner in which the whole resources of the Government have been expended; with respect to the first you will immediately comply with the application by laying before them a Copy of the Warrant of the Lords of the Treasury for the special application of the Crown Revenue–[1] If they should apply for an account of the application of the £5000 permanent Grant by the 35 Geo: 3. for the administration of Justice and Support of the Civil Government you will communicate the special manner in which that Sum has been appropriated, but if a demand should be made for an account of the manner in which the other funds at your disposal have been applied you will inform them that although there is no Law which requires that they should be applied in any special manner you are authorized to communicate the manner in which His Majesty has been graciously pleased to dispose of them–

I have &c &c &c

BATHURST

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[1]See *below p. 322.*

LOWER CANADA.

Bathurst to Dalhousie.[1]

Downing Street London
31 Aug[t] 1826.

My Lord,

If there should unfortunately appear, in the next Session of the Legislature, to be a decided disposition to act with hostility towards the Government, & thereby to excite irritated feelings within the Province, I have to direct Your Excellency, in that case, to take the earliest opportunity of proroguing the Legislature, whatever may be the inconvenience arising from such prorogation.

I have the honor to be, My Lord,
Your Excellency's most obed[t] serv[t]

BATHURST

The Earl of Dalhousie
G C B
&c &c &c

Endorsed 31 August 1826
From Earl Bathurst
Legislature to be prorogued if the Ass[y] shall shew a hostile spirit

Resolutions of Legislative Council, Lower Canada, 28 October, 1826.[2]

That the Resolution of the Assembly in the words following: "Resolved that "this House will hold personally responsible His Majesty's Receiver-General of " this Province, and every other person or persons concerned, for all monies levied " on His Majesty's subjects in this Province, which may legally have come into " his or their hands, and been paid over by him or them, under any authority " whatsoever, unless such payments be or shall be authorised by an express pro- " vision of Law," is an attempt to raise their separate vote above the law, by dictating a rule of conduct to a public officer, who is constitutionally bound to act according to his instructions from the Executive Government, and not from either of the two Houses of the Legislature.

.....

That it is unconsituitional and contrary to law, for one Branch of the Legislature to assume to itself a right to make resolutions to impede or put a stop to the Executive Power of Government, as by law established .

.....

That the Legislative Council repose confidence in His Excellency the Governor in Chief, and feel persuaded that he will faithfully discharge his duty to our common Sovereign, and to the people of this Province, according to constitutional principles.

.....

[1] *G. 15, p. 174.*
[2] *Journals of Legislative Council, Lower Canada, 1826, pp. 189-191.*

That it was and it is the undoubted right of His Majesty to grant the Waste Lands of the Crown in this Province, on such tenure and conditions as His Majesty in his wisdom considered or may consider to be best calculated to produce improvement, and to make this Colony as a British possession, a valuable part of the Empire.

.....

That the Act of the fourteenth George III, chapter 83, which give [sic] to this Province the Civil Law of France expressly exempted free and common soccage lands, from the consequences of the feudal tenure which was only an Act of Justice to His Majesty's natural born subjects, without infringing upon the property or rights of His Majesty's then newly acquired subjects.

.....

That the Imperial Acts of the third Geo. IV. chapter 119, and sixth Geo. IV, chapter 59, in providing for a change of the feudal tenure into free and common soccage, have been scrupulously attentive to preserve the rights of property, and leave it optional to the parties to avail themselves of the change or not, according to their own view of their interests and without compulsion.

.....

That good policy enjoins that a stimulus should be held out to the eventual assimilation of the different classes of His Majesty's subjects in this Province; and that nothing can be more conducive thereto, than the gradual introduction of a tenure founded on British principles in preference to foreign.

.....

That His Majesty's subjects British born, or of British descent, are entitled to the consideration of His Majesty's Government and Parliament, when making Laws respecting this Province, and ought not to be treated as foreigners in a British land by permanently subjecting them to the feudal tenure, which is repugnant to their feelings and habits; and therefore the Acts for producing a gradual and optional change of the feudal lands into free and common soccage, for such as prefer it, should not be repealed.

.....

That neither by the Capitulation nor the surrender of Canada to Great Britain at the treaty of peace, was there any stipulation for the preservation of the French Civil Law to the inhabitants, but on the contrary it was introduced in 1774, after the English Civil Law had been the rule of decision for above ten years subsequent to the conquest and surrender, and against the wishes of His Majesty's old subjects; and therefore what was then given as a boon to the new subjects at the expense of the old, cannot now be converted into a right precluding attention to the interests of natural born subjects and their descendants.

.....

That the Legislative Council see with deep concern and regret, that the Assembly persist in their claim to unconstitutional power in opposition to the provisions of the 14th George III, chapter 83, and of the Acts of the Imperial Parliament clearly expressed, and which power, if submitted to, would annihilate the King's Prerogative and the rights of this House.

.....

That the Legislative Council will continue to support the just prerogatives of the Crown, and the constitutional rights and privileges of this House, in conformity to the Act of the 31st. George III, chapter 31, and will support the lawful supremacy of the Imperial Parliament, as the surest means of increasing the prosperity of this Province, and continuing the blessings that the inhabitants thereof enjoy under British protection, as a dependant portion of the Empire.

.....

That an humble Address be presented to His Excellency the Governor in Chief, with the above resolutions, and to pray that His Excellency will be pleased to transmit the same to His Majesty's principal Secretary of State for the Colonial Department as the sentiments of the Legislative Council upon the subjects to which they have reference.

PROVINCIAL AGENT.

RESOLUTIONS OF ASSEMBLY, LOWER CANADA, 14 March, 1826.[1]

The Provincial Legislature is invested with full legislative authority in the Province.

1. *Resolved.* That it is the Opinion of this Committee, That the Legislature of this Province constituted by virtue and under the authority of the Act of the Parliament of *Great-Britain,* passed in the Thirty-first Year of the Reign of His late Majesty, is, by the said Act, invested with full and entire Legislative Authority within the said Province in all cases whatsoever not repugnant to the said Act.

The regulation of the Trade of the Province is reserved to the Imperial Parliament.

2. *Resolved,* That it is the Opinion of this Committee, That by the said Act the Regulation of the Trade of the said Province with other Countries is expressly reserved to the Parliament of the Mother Country, and it is provided that the Acts of the Provincial Legislature, on various matters of great importance within its competency, be submitted for the sanction of the said Parliament before that they shall have force of Law.

The Subjects in this Province not being represented in the Mother Country, their Rights and Interests may be misunderstood and seriously affected.

3. *Resolved,* That it is the Opinion of this Committee, That His Majesty's Subjects in this Province are not represented in the Parliament of the Mother Country, and cannot, by reason of the distance and their peculiar circumstances, be represented therein, and that their Rights and Interests in matters coming before Parliament as provided in the said Act, are liable to be misunderstood and injuriously affected.

That evil has been averted in many other British Colonies by means of Agents in the

4. *Resolved,* That it is the Opinion of this Committee, That the Evils which might result therefrom have been endeavoured to be averted in many of the other British Colonies similarly situated, by having Agents or Commissioners appointed by their local Legislature, residing at the Seat of the Government of the Mother Country,

[1] *Journals of Assembly, Lower Canada, 1826, p. 279.*

Mother Country.

for the purpose of attending to and supporting the Rights and Interests of the Inhabitants of these Colonies respectively, and that on various occasions the efforts of such Agents or Commissioners have been attended with favourable results, both to the Interests of the Colonies and of the Parent State.

Various Acts have been passed by the Imperial Parliament affecting the Rights and Interests of this Province without sufficient time being given to support or defend those Rights and Interests.

5. *Resolved*, That it is the Opinion of this Committee, That of late, various Bills and Acts have been introduced or passed in the Parliament of the United Kingdom, seriously affecting the Rights and Interests of this Province, without sufficient time having been afforded to the Subjects, in this distant part of His Majesty's Dominions, either by Petition or otherwise, to support or defend their Rights and Interests so affected.

The Appointment of an Agent is now become indispensable.

6. *Resolved*, That it is the Opinion of this Committee, That the Appointment of such Agent or Commissioner, at all times necessary and desirable under the above mentioned Provisions of the Constitutional Act, is now become indispensable for the security of the Rights and Interests of the Subjects in this Province, and their general Welfare.

It is expedient to appoint one or more Agents for the Province.

7. *Resolved*, That it is the Opinion of this Committee, That it is expedient to appoint one or more Agents or Commissioners to attend to, forward and support the Rights and Interests of this Province at the Seat of the Government of the United Kingdom.

Resolution of Legislative Council, 23 March, 1826.[1]

Resolved, That the Legislative Council doth not concur with the Assembly in their Resolutions of the 14th instant, received by Message on the 15th instant, because those Resolutions consist in a series of abstract propositions, some of them questionable and all leading to a main object, the appointment of an Agent to reside at the seat of Government of the Mother Country; and it is the opinion of the Legislative Council, that the Governor, Lieutenant-Governor, or Person administering the Government of this Province for the time being, is the fit and constitutional channel of communication between the Legislative bodies in this Province, and His Majesty's Government in the United Kingdom of Great-Britain and Ireland.

An amendment was then proposed to be made to the said Resolution, by leaving out all the words from "doth not," inclusive, and inserting in lieu thereof, the following ones: "concurs with the Assembly in the expediency of

"appointing an Agent or Agents, to reside at the seat of the Imperial "Government, but that in their opinion such Agent should be ap-

[1] *Journals of Legislative Council, Lower Canada, 1826, pp. 167-168.*

"pointed for the purpose of representing the Commercial interests "of this Province, and with the concurrence of His Majesty's Repre- "sentative."

The same was disagreed to

And the question of concurrence being put,

Whether to agree with the Committee of the whole House on the said Resolution?

It was resolved in the affirmative.

Dissentient.

Because, by the Resolution passed by this House, it is assumed that the Governor, Lieutenant-Governor, or Person administering the government is the fit and constitutional channel of communication between the Legislative bodies in this Province, and His Majesty's Government in the United Kingdom of Great-Britain and Ireland, whereas such Agent, to be enabled to perform effectually the duties of that office, must necessarily reside at the seat of the Imperial Government, which His Majesty's Representative cannot do.

Because, the necessity of the appointment of an Agent to reside at the seat of the Imperial Government, for the purpose of representing the Commercial Interests of this Province, is recognized by the Message of His Excellency the Governor in Chief of the twenty-second day of March instant,[1] and in the Appointment of whom, under proper regulations, His Excellency was further pleased to signify his willingness to concur, a disposition which ought to have met with the grateful acknowledgement of this House.

Because, the distance of this country from the seat of its Legislation in commercial matters, absolutely requires the residence of a Commercial Agent, who should be always present at the seat of the Imperial Government, for the purpose of giving the necessary information respecting those interests of this Colony, which may be affected by any proposed enactment, and respecting which time could not be given to obtain the requisite information from His Majesty's Government in this Country.

Because, there does not appear any valid reason why the Legislature of this distant Possession of the Empire should be deprived of an advantage enjoyed by so many Colonies, with the recognition of the Imperial Government.

(Signed) JOHN CALDWELL,
L. R. C. DE LERY,
T. COFFIN.

Legislative Council, 23d March, 1826.

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[1]On 22 March, 1826, Lord Dalhousie informed the Assembly that: "being informed of an Application made or about to be made to the Legislature for the Appointment of a responsible Agent to represent the Commercial Interests of the Province at the Seat of the Imperial Parliament, acquaints the House of Assembly that he is disposed to concur, in any measure for the Appointment of an Agent or Agents, under proper Regulations." *Journals of Assembly, Lower Canada, 1826, p. 341.*

IMPERIAL ADMINISTRATION.

Transportation of Convicts.

Bathurst to Dalhousie.[1]

Downing Street

8 June 1826

My Lord,

Having referred to the consideration of M[r] Secretary Peel, Your Lordships dispatch of the 3[rd] April last relative to the Transportation of Convicts from the Canadas to Bermuda,[2] and Stating the advantage which would result from the establishment of some regulation which would enable Your Lordship to give the necessary directions for their removal, I have now the Honor to acquaint Your Lordship that the Superintendent of Convicts cannot receive any Convict into his Charge, except by an Order from the Secretary of State, and M[r] Peel therefore sees no alternative but that in every case of a Sentence of Transportation passed in the British Colonies in America and the West Indies, the same must be notified to his Department before the transfer of the Convict to Bermuda can be legally accomplished.

I have the Honor to be

My Lord,

Your Lordship's most obed[t]

Humble Servant

BATHURST

Lt General
The Earl of Dalhousie
G.C.B.

Endorsed 8[th] June 1826

From Earl Bathurst to The Earl of Dalhousie

Cases of Sentence of Transportation to be notified to Sec[y] of State before they can be carried into execution

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[1] *G. 15, pp. 104-105.* This despatch is of interest in connection with the case of Wolfred Nelson and others in 1838.

[2] In a Circular of 2, March, 1835, Lord Aberdeen stated, "Bermuda is not, and was never intended to be a Place of transportation in the correct Sense of that Word—Certain public Works being in progress there, some Convicts have been sent from this Country to labour upon them, precisely in the same manner as others were employed on the Hulks of Woolwich, or in the Dock Yard at Portsmouth.—There is not at Bermuda, either a demand for the Service, or means for the subsistence of an unlimited number of Convicts.—It is not the design of His Majesty's Government that any Persons should be transported thither, excepting only such Offenders as may be specially selected for that purpose by the Secretary of State of the Home Department." *G. 73, p. 168.*

REMOVAL OF CENSURE OF SIR FRANCIS BURTON.

BATHURST TO DALHOUSIE.[1]

DOWNING STREET

5th September 1826

MY LORD,

I have received a Letter from Your Excellency by which I understand that you did not consider a Dispatch which I addressed to Sir Francis Burton the Lieutenant Governor of the Province on the 30 September 1825 to have had such an Official character as to have authorized you to take any Public Notice of it. This dispatch was addressed to him at the time when Your Excellency had not yet returned to Your Government, but it arrived at Quebec after Sir Francis Burton's departure from it. It was written on finding that he was not in possession of those two specific and positive Instructions which were specially and exclusively named in my Dispatch of 4th June 1825 as being those, for having acted in variance with which, he merited censure. My Dispatch of September consequently recalled that Censure, and Your Excellency is desirous of being duly authorized either to state to the Assembly the substance of that Dispatch or to make some explanatory communication in justification of Sir Francis Burton.

Your Excellency therefore will take a fit opportunity of making it known, that on Sir Francis Burton communicating to me the fact that he had not in his possession the two Instructions above referred to, and as he has declared that if he had been in possession of them, they were so positive that he would have implicitly obeyed them, Your Excellency has been instructed to have it duly notified that Sir Francis Burton stands entirely acquitted of any blame of having acted at variance with those Instructions.

I have the Honor to be

My Lord

Your Lordship's obedient

humble Servant

BATHURST

Lieut General
The EARL OF DALHOUSIE G.C.B.
&cr &cr &cr

Endorsed Downg St. Septr 1826

From Earl Bathurst

Respecting communication to be made to the Legislature of the removal of censure passed on Sir F. Burton in a dispatch to him of 4th June 1825–

[1]*G. 15, pp. 180-184.*

TREASURY WARRANTS.[1]

Order in Council re Payment of Salaries 31 Oct. 1826.[2]

George R.

Whereas by an Act of the Legislature of Our Province of Lower Canada of the 36th Geo: 3d Cap 9 [3] entituled An Act for granting to His Majesty additional and New Duties on certain Goods Wares & Merchandise, for appropriating the same towards further defraying the Charges of the Administration of Justice, and Support of the Civil Government within that Province, and for other purposes therein mentioned, it is enacted that there shall be issued and paid Annually, a Sum therein mentioned equal to £5000 Sterling towards defraying the Expences of the Administration of Justice and the Support of the Civil Government within Our said Province &c &c And it is further enacted that the due Application of all such Monies shall be accounted for to Us Our Heirs and Successors through the Commissioners of Our Treasury in such manner as We, Our Heirs and Successors shall direct And whereas the Commissioners of Our Treasury have recommended unto Us to authorize the Governor of Our said Province of Lower Canada to pay, out of the said Grant of Five thousand pounds the Salaries and Expences hereinafter mentioned— that is to say—

Salary of the Secretary to the Governor in Chief	£ 500	"	0	"	0
Ditto Assistant	200	"	0	"	0
Ditto – 2 Assistants in the Office	365	"	0	"	0
Ditto – Office Keeper	45	"	0	"	0
Contingencies of Provincial Secretary's Office	60	"	0	"	0
Allowance to the Judges for Circuits	825	"	0	"	0
Ditto to the Sheriffs for 3 Executioners	81	"	0	"	0
Ditto– for Coroners	310	"	0	"	0
Ditto– for the 3 Clerks of the Crown	300	"	0	"	0
Ditto– for the Prothonotaries of Quebec Montreal Three Rivers, Gaspe, St Francis for Registers, Stationary &c exclusive of the Expences of Fuel &c	345	"	0	"	0
Ditto of the Clerks of the Peace at those Places for Stationary, Apprehensions and Commitment of Criminals by the Magistrates, and all other expences incurred for Police purposes in and out of Quarter Sessions	1050	"	0	"	0
Salary of the Interpreter of the Court at Quebec	40	"	0	"	0
Montreal	40	"	0	"	0
Three Rivers	25	"	0	"	0
Salaries of the Gaolers and allowance for Turnkeys at Quebec, Montreal, Three Rivers and Sherbrooke	430	"	0	"	0
Salaries of the High Constables at Quebec Montreal and Three Rivers	90	"	0	"	0
Salary of the Keepers of the Court houses at Quebec, Montreal, Three Rivers New Carlisle & Sherbrooke	216	"	0	"	0
Salary of the Messenger & Office Keeper of the Executive Council	50	"	0	"	0
	£4981	"	0	"	0

To which We being graciously to condescend, Our Will and Pleasure is and We do hereby direct authorize and require You to pay out of the said Grant of Five Thousand Pounds made by the said Act of the Legislature of Our Province of Lower Canada of the 36 Geo: 3d Cap 9[3] as above mentioned,

[1] This system of appropriation by Treasury Warrant has hitherto attracted little notice. The Assembly largely ignored the issue, see *below, pp. 396-397.*

[2] *G. 15. pp. 242-244.*

[3] Really 35 Geo. III, Cap. 9.

the said Salaries and Expences amounting in the whole to the Sum of Four Thousand Nine hundred and Eighty one Pounds accordingly And Our further Will and Pleasure is, and We do further direct and require You to transmit on the 1st of January and 1st of July in every Year an account of such Salaries and Expences to the said Commissioners of Our Treasury or the Commissioners of Our Treasury for the time being, the first Account to be rendered on the 1st of January 1827 And for so doing this shall be your Warrant Given at Our Court at Carlton House this 31st day of October 1826 in the 7th Year of Our Reign.

By His Majesty's Command

To

Our Right Trusty and Right Wellbeloved Cousin George Earl of Dalhousie G.C.B, Captain General & Governor in Chief in & over Our Province of Lower Canada and to the Governor Lieut. Governor & Person administering the Government of Our said Province of Lower Canada for the time being

LOWTHER
G.C.H. SOMERSET
MOUNT CHARLES

RECEIVER GENERAL.

Hill to Horton.[1]

Treasury Chambers.
30th October 1826.

Sir.

The Lords Commissioners of His Majesty's Treasury having had under consideration Your Letter of the 15th of August last, transmitting the Copy of a Dispatch and of it's enclosures which were received from Lieut. General The Earl of Dalhousie respecting the Financial Affairs of Lower Canada, and requesting to be favoured with their Lordships opinion thereon.–

I am commanded to acquaint you for the information of The Earl Bathurst that My Lords cannot admit that the Provinces of Lower Canada have any Legal or equitable claim upon the Government of the United Kingdom of Great Britain and Ireland to make good the loss which has been sustained by the Insolvency of Mr Caldwell the Receiver General of the Province.–

Mr Caldwell was appointed by His Majesty to receive and account for the Revenue granted by the Legislature of the Province to His Majesty, and he was required by the nature of his Office to make all such payments thereout as he might be duly authorized to make, but no authority could be given to him to make payments not sanctioned by Votes of the Legislature, and consequently all surplus of Revenues not appropriated by the Legislature remained of necessity

[1] *Q. 177, pp. 159-164.*

in his hands, and any deficiency which arose while those Monies were in his hands must be made good by the Province:– It is true that this Board have as the Constitutional advisers of the Crown, and as the Controling Authority over all Accounts and Debtors to the Crown, An Authority to call for Accounts, and to see that they are correct, but they have no authority to direct any Money raised by Grants of Parliament in Great Britain or of Legislatures in the Colonies, to be appropriated or applied to any other purposes than Parliament or the Legislatures, under whose authority the Money was raised may have prescribed– the Debt of M^{r} Caldwell being due to the Crown (tho' the money was applicable only to such purposes as the Legislature of the Colony might prescribe) the process of the Crown is made use of in the Colony for the Recovery of the Debt, And Any Sums which may be recovered from his Estates or Sureties will be paid into the hands of the Receiver General of the Province in Diminution of the Debt, And those Sums will be applicable to such purposes as the Legislature of the Colony may direct.

With a view however to guard against any Similar deficiency, My Lords desire to suggest that the following arrangement may be made for the security of the Public Revenue in the hands of the Receiver General, Viz^{t}

That the Governor of the Province should direct a proper and sufficient fire Proof Vault to be erected in the Office of the Receiver General, or in some other appropriate place, to be secured by three separate Locks, that the Keys of one of these Locks should be in the custody of the Receiver General, another in the Custody of the Auditor of Provincial Accounts, and the third in the Custody of the Secretary to the Government or some other Provincial Officer.

That the Receiver General should make up and render to the Governor a statement of his accounts on the 1st of January, 1 of April, 1st of July and 1st of October in each year, and that he should be required to deposit in the vault so secured any Balance of Money which may then be in his Custody exceeding (say £10,000–) and that the two other Officers to whom the Keys of the Vault are entrusted should be present at such Deposit and that they and the Receiver should certify to the Governor that it has been so deposited.–

If the £10.000 left in the Receiver Gen^{ls} hands together with the accrueing Revenue should be found not sufficient to discharge the whole of the demands payable by the Receiver General he should be required to state the same to the Governor, who being satisfied of the necessity of placing a further sum in his hands, should address a Warrant to the Receiver General and to the two other Officers in whose possession the Keys may be, directing them to open the Vault and to take thereout and place in the hands of the Receiver General such a sum of Money as the Warrant may prescribe– And for the further security of this treasure My Lords are of opinion that the Governor should be required as often as he may think necessary, and at least once in every year to direct such Individuals as he may think proper, not less than five and being Officers of the Colonial Government to inspect & report to him the particulars and quantities of Money so secured and whether the same is correct according to the Account to be previously rendered to them.–

With respect to the suggestions of Lord Dalhousie that a Store house and Buildings in Quebec belonging to Mr Caldwell should be taken in diminution of the Debt and used as a Custom House, I am to acquaint you for the Information of Lord Bathurst that if these Buildings are adapted for this purpose and if the Accommodation is wanted My Lords would see no objection to the arrangement, provided the value at which the Premises should be taken were agreed upon between Lord Dalhousie and Mr Caldwell, the more especially as the expence of any Building which may be erected or purchased for a Custom House at Quebec must of necessity be provided and paid for out of the Funds of the Colony– now that the whole Revenue of Customs payable in the Colony is applicable only to Colonial purposes:–

Should however any difference of opinion arise between Lord Dalhousie & Mr Caldwell as to the value of these Premises– My Lords see no other satisfactory mode of rendering them available for the payment of the Debt due to the public than by exposing them to sale by Public Auction and Applying the proceeds in diminution of the Debt.

I am, Sir,
Yr obedt Servt

W. HILL.

R. W. Horton Esqr
&c &c &c

Wilmot Horton to Dalhousie.[1]

Private

Downing Street

31st Octr 1826.

My Dear Lord,

As it may be satisfactory to Your Lordship to receive a distinct explanation of the precise point of view in which Mr. Caldwell's affairs are considered here, I shall take the liberty of troubling you on the subject.

Mr Sewell has drawn up the argument as on the side of the Colonial Legislature, in which they contend that, as the Receiver General was not their Officer, though he had the custody of their money,– as they had no power of control over him in examining & regulating his accounts,– & as they were not the parties to require from him securities bearing a closer ratio to his balances in hand,– they ought not, either in Law or in Equity, to suffer for his defalcation.

Now the fallacy of this reasoning (which in the first instance, I admit, may appear plausible), is this– that the King is, in this argument, put entirely out of the question. Mr Caldwell was the King's Officer for the purpose of receiving the money voted to the King by the Colonial Legislature, but to be applied only to such purposes as the King, Legislative Council, & Assembly, might direct. The King is, in theory, precisely as much interested in the Revenue of Lower Canada as he is in the Revenue of Great Britain, Let us suppose, therefore, that a Public Officer in Great Britain, entrusted with the receipt of public money,

[1] *G. 15, pp. 283-287.*

becomes a defaulter: The Parliament of Great Britain provide for the deficiency thus occasioned; & yet the Houses of Lords & Commons have no more special control over such Public Officer than the Legislature of Lower Canada had over Mr Caldwell. If the Legislative Council or Assembly were dissatisfied with him, they might have addressed the Crown for his removal, or, if they thought the Securities which he gave insufficient, they might have addressed the Crown to call upon him for larger securities.

I understand that a claim has been preferred on the part of Mr Caldwell to this extent: That whereas he & his Father before him only received £500 per annum, a sum far too small to be considered as a remunerating salary for the duties which they performed, he, in his own person & as the Representative of his Father, has in equity a claim for arrears of Salary unpaid, to such an amount as, if paid, would have given them, on a comparison with other Receivers General, a fair remuneration for their services.– The answer to such a claim would be, that instead of Salary, they had the use of the money, & have misused it;– & the moral of the whole would be, that it is an infinitely better principle, to pay distinct Salaries, than to save Salaries on the terms of a perquisite, such as that of a Public Accountant, being permitted tacitly to employ money in his hands.

But a question has been put to me– Supposing that the Legislature of Lower Canada, who have sustained the loss by Mr Caldwell's defalcation, were disposed to consider his claim for arrears of Salary as a substantive one, & to release him from payment beyond such a sum as, together with such calculated arrears, would make up the whole amount of the deficit,– in that case (it is asked) will the Treasury, on the part of the Crown, consent to such a composition? My answer to this question would be, that I am satisfied that the Treasury would not give an answer, until they had such a proposition submitted to them in reality, & not hypothetically;–& as a private opinion, I should imagine that they would be disposed to advise the Crown to sanction any measure submitted by the Legislature of Lower Canada having this object in view.

I have the honor to remain

Your Lordship's obt hblesrvt

R. W. HORTON

The Earl of Dalhousie G C B
& & &

Endorsed Downg St 31 Oct 1826

From R. W. Horton Esq respecting Mr Caldwell's Affairs.

WILMOT HORTON TO DALHOUSIE.[1]

Private

DOWNING STREET

Oct[r] 1826.

MY DEAR LORD,

Your official letter respecting the difficulty which has been found in interpreting the Treasury Minute on the subject of the Salaries of Custom-house-Officers has been duly communicated to the Treasury, & of course your Lordship will receive their official answer, but here, again, I think it may be convenient to you to receive a private letter from me.

The same mistake appears to pervade the Colonial opinions on this subject, which I have already observed upon in my letter on M[r] Caldwell's affairs, viz. They do not understand that the duties are levied in the name of the King, & that the King has a right to appoint his Officers, which right, in fact, is undisputed by the Legislature. The same right which gives him a power of appointment gives him a power of providing for the remuneration of those who are appointed. Of course he is to be considered as Trustee for the Colony (if the phrase may be permitted), & it is not to be supposed that he will use his Trusteeship improperly. It is therefore to be expected that he will attach such Salaries to the situations of Collectors of this Customs revenue as may be sufficient to remunerate them, & such Salaries naturally would be paid out of the gross proceeds of the Customs. As long as fees were taken, there might be less necessity for those Salaries; but the system of Fees is extraneous to the question of the authority of the King so to act in this instance. The percentages already taken by certain Officers in Canada are of the nature of payments out of the gross proceeds; & the manner in which the case may ultimately be disposed of, I have no doubt, will be this,–that no distinction will be made, as none ought to be made, between Revenue raised under one Act & under another Act, but that the Salaries being fixed at a proper rate, the gross proceeds will pay them all,–which will operate as an equal per centage on the whole sum raised.

It appears to have been understood in Canada, that a fourth of the Revenue was to be applied for this purpose. That is an entire mistake. The Treasury Minute[2] prescribed that no Colony should be called upon to pay more than a fourth part of its Revenue for that purpose, & that, if that fourth would not include an adequate remuneration to these Officers, the Treasury in that case would supply the deficit, until a bonâ fide additional revenue, arising out of the Trade Acts, had accrued, over & above what was now received, so as to release the Treasury from this temporary assistance which it now proposed to give. Therefore if, instead of a fourth part, the 50[th] part of the Revenue in Canada had been sufficient to pay the Salaries at the rate which the Government directed, all the remaining part of the Revenue would have been subject to appropriations as before. The case would have been the same, if it had been the 8[th] or 16[th] or any other proportion. If the proportion assigned was neither more nor less than sufficient, the whole of it was to be applied in payment of

[1] *G. 15, pp. 288-291.*
[2] See below pp. *344-346.*

the Salaries. If not sufficient, the Treasury was to supply the deficit; & if more than sufficient, only so much as was necessary to be taken.

I hope that this explanation will enable Your Lordship to see this matter in its true light.

I have the honor to remain

Your Lordship's ob^{t} hble serv^{t}

R. W. HORTON

The Earl of Dalhousie G.C.B.
&c &c &c

Endorsed Oct^{r} 1826

Private from R. W. Horton, respecting paym^{t} of officers of the Customs

ADDRESS TO SIR PEREGRINE MAITLAND, 1827.[1]

To His Excellency Sir Peregrine Maitland K.C.B. Lieutenant Governor of the Province of Upper Canada, and Major General Commanding His Majesty's Forces therein &^{c} &^{c} &^{c}

May it please Your Excellency

We His Majesty's Dutiful and Loyal Subjects, the Undersigned Inhabitants of the Eastern District, beg leave most respectfully to address Your Excellency on a subject which cannot but be extremely interesting to our fellow Subjects throughout the Province. We, have always considered it the undoubted right of British Subjects, to approach their Sovereign or His Representative, and to express in Respectful Terms their Opinions of public Men and Measures, and We have felt it a particular duty to pay attention to the Measures and conduct of our Representatives, entertaining no doubt of our Right freely to canvass their proceedings and as freely to express our Opinions of them–

Possessing these feelings and impressions on the Subject, We were not surprised to observe our fellow subjects, in other Districts of the Province exercising that right in their Several addresses to Your Excellency, during your last visit to the Eastern Part of the Province, but We must confess that We were utterly astonished to observe in the reply of the House of Assembly, to Your Excellency's Speech, at the Opening of the present Session of the Legislature, a most unusual and as We presume to consider it ungracious reproach to Your Excellency for having received addresses, conveying the sentiments and opinions of their Subscribers, as to the conduct of a certain portion of their Representatives,–

We therefore Solemnly protest against the doctrine attempted to be established by the House of Assembly, that the people of this Province are not at liberty to express to Your Excellency, in such Language as they may consider most fit their Opinions of the measures of their Representatives, or that Your Excellency shall not be at liberty to receive addresses couched in other Terms than those which may be palatable or acceptable to the House of Assembly or any portion of its members–

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[1] *Upper Canada Sundries, January-February, 1827.*

We beg to Assure your Excellency that We are duly sensible of the Weight which the House of Assembly ought to hold in the Government of the Province, and shall always desire to treat that Honorable House, with every possible respect, but while We entertain these feelings, We would desire to see our Representatives as a Body deserve the Good Opinion of their Constituents by their zeal and attention to the best Interest of the Province, rather than by any attempts, to surpress [sic] the expression of public Opinion--

We beg leave to renew to your Excellency the Assurance formerly given of Our Affection to His Majesty's Person and Government, and to express our earnest hopes, that Your Excellency may long continue to administer the Government of this Province, and promote as Zealously as Your Excellency has invariably done its true Interests--[1]

Cornwall 25th January 1827.

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PROVINCIAL AGENT, LOWER CANADA.

Proposed Bill, 1827.[2]

Whereas it is highly expedient and necessary that there be appointed a Person fitly qualified to be an Agent on behalf of the Inhabitants of this Province in the United Kingdom of Great Britain and Ireland, for the purpose of making such solicitations and representations to His Majesty's Government and managing and transacting such Public matters as may be confided to him for the welfare of this Province: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, "An Act for making more effectual Provision for the Government of the Province of Quebec in North America", And to make further provision for the Government of the said Province", And it is hereby enacted by the authority of the same, that Sir James M[c]Intosh,[3] Knight, be, and he is

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[1]In the reply to the speech from the Throne, the Assembly had remarked: "We learn with satisfaction that Your Excellency found leisure, during the recess, to visit the several Districts of this Province, and moreover that Your Excellency feels satisfied that prosperity and contentment pervade them all; but we should be wanting in candour towards your Excellency and justice to ourselves were we not to express our sincere regret, that your Excellency thought proper in some instances to receive and answer with complacency addresses which contained unwarrantable reflections upon a co-ordinate branch of the Legislature." In reply Sir Peregrine Maitland took notice of the lack of courtesy displayed by the Assembly and added ——— "Although I hope I have not been altogether unsuccessful in my endeavours to promote harmony between the several branches of the legislature it is not in my power to ensure a good understanding between you and your constituents. That must necessarily depend upon their opinion of the zeal, diligence and caution with which you have served them.—— An opinion which the British Constitution has never denied the people the right to express, but which I can never desire to find conveyed in exceptionable language.

To have refused the addresses which were presented to me on my tour through the province would have been to adopt a course not reconcilable with the spirit of our constitution, and they deserved my warmest acknowledgment, not on account of any mention they might contain of a co-ordinate branch of the legislature, but as conveying, the generous and dutiful sentiments of a loyal people, able to appreciate and solicitous to do justice to the beneficent intentions of their sovereign." *Quebec Gazette, 30 December, 1826.*

[2]*Lower Canada Sundries, S. 185, folio 84.* This Bill was read for the first time on 31 January and was last reported on 9 February.

[3]Sir James Mackintosh, M.P.

hereby nominated and appointed Agent in the United Kingdom of Great Britain and Ireland for this Province, for the purposes aforesaid, and the Speaker & Members of the Legislative Council for the time being resident in this Province and the Speaker and Members of the Assembly for the time being resident in this Province, be, and they are hereby appointed Commissioners for instructing and directing the said Agent in his Solicitations and in the management of the Public matters confided to him, pursuant to such direction and authority as the said Commissioners shall from time to time receive from the Council & Assembly respectively when sitting– Provided nevertheless, that the said Commissioners, or any nine of them may from time to time during the recesses of the Provincial Parliament, give to the said Agent in Great Britain such further instructions as they shall think fit for the Public Service of this Province.– Provided also that in case a difference of opinion shall, at any time happen between such of the said Commissioners as are Members of the Council, and such of the said Commissioners as are Members of the Assembly, wherein the Commissioners belonging to the said Bodies respectively adhere to different opinions, then, and in such case the Commissioners belonging to each of the said Bodies respectively, not being less in number than nine, shall be and they are hereby empowered to act separately, any thing in this Act contained to the contrary in any wise notwithstanding.–

And be it further enacted by the authority aforesaid, that the said Commissioners herein appointed are hereby empowered and required to provide and appoint some fit and proper Person to be and act as Secretary to the Commissioners, and to have the custody and charge of their Office, of the books and Papers, matters and things there to be deposited & kept, and to attend the said Commissioners as their Secretary, and generally to transact the business of Clerk to the said Commissioners, as they the said Commissioners shall from time to time direct, and the said Commissioners are hereby further empowered to allow to the said Secretary such compensation or Salary for his care trouble and attendance as aforesaid, as they shall think fit.–

And be it further enacted by the authority aforesaid, that the Secretary of the said Commissioners for the time being, shall not presume to send or deliver out of, or from the Said Office to any Person or Persons whomsoever, save and except to the Governor, Lieutenant Governor or Person Administering the Government of this Province for the time being, or to the Legislative Council or Assembly when sitting by order for that Purpose, any Books, Letters, Packets or other Documents or Papers whatsoever there required, to be kept and preserved, under the Penalty of five hundred pounds Sterling for each offence.– Provided always that the several Members of the Legislative Council and Assembly shall at all times have access to the said Books, Packets, Letters, Papers and Documents in the said Office for the purpose of perusal and Examination or of making extracts therefrom, and that the said Secretary shall, and he is hereby ordered to attend at the said office when required for such Purpose.–

And be it further enacted by the authority aforesaid, that any nine of the Commissioners hereby appointed, shall, and may at any time open all and every the Packets and Letters which from time to time shall or may come from the Agent for this Province directed to the Commissioners of Correspondence hereby

appointed– Provided that the same be opened, perused and kept at the said Office of the said Commissioners of Correspondence & no where else.–

And be it further enacted by the authority aforesaid, that as often as it shall and may be necessary, during the recesses of the Provincial Parliament, the said Commissioners are hereby empowered and required to meet for the drawing up and transmitting of Letters in answer to such Letters or Packets so received from the Agent or for any other of the purposes herein before mentioned, and any nine of the said Commissioners shall and may from time to time appoint a certain day for the meeting of all the said Commissioners, always giving fifteen days notice by Public Advertisement in the Quebec Gazette, and in the other Quebec Newspapers of the day appointed for such meeting, except in case of a dissolution, in which case the said Commissioners or any fifteen of them, may meet within twenty days after any dissolution or Prorogation, giving fifteen days notice to all and every the several & respective Commissioners hereby appointed.–

And be it further enacted by the authority aforesaid, that the Commissioners hereby appointed, shall cause fair Copies of all their proceedings, in pursuance of this Act, together with the names of the Commissioners present at each meeting, to be duly entered in a book to be kept for that purpose, and it shall be the duty of the said Secretary so to be appointed as aforesaid, to lay before the Legislative Council and Assembly respectively, on the first day of each Session of the Provincial Parliament a Manuscript of all entries made in the said Book, from the Close of the next preceding Session of the Provincial Parliament to that day.—

And be it further enacted by the authority aforesaid, that in case it shall at any time happen that the Assembly of this Province shall be dissolved or otherwise at an end, the Members of the then late Assembly shall be, and they are hereby declared to be authorised to continue to act as Commissioners of Correspondence under this Act, and to execute the powers and authorities herein before given to them as aforesaid, until a new Assembly shall meet.

And be it further enacted by the authority aforesaid, that from and after the passing of this Act, there shall be allowed and paid to the Agent for the time being yearly and every year at the rate of One thousand pounds Sterling Per annum for Salary, and in full of all Contingent Accounts relating to such appointment, and all other allowances whatsoever, which can be claimed on account thereof,–And it shall and may be lawful for the Governor Lieutenant Governor or Person Administering the Government of this Province for the time being to issue his Warrant upon the Receiver General of this Province for the time being is hereby authorised and required from and out of any unappropriated monies which now are, or hereafter may come into his hands to pay the said Sum of One thousand pounds Sterling to the Agent for the time being, by half yearly Payments, and to be made in advance clear of all deductions for remittance or otherwise

And be it further enacted by the authority aforesaid, that this Act may be altered or Amended at any time during the present Session of the Provincial Parliament.—

And be it further enacted by the authority aforesaid, that this Act shall continue and be in force until the first day of May one thousand eight hundred and twenty eight.—

ASSEMBLY OF LOWER CANADA, SESSION OF 1827.

Dalhousie to Assembly, Lower Canada, 31 January, 1827.[1]

Relating to the late Receiver General.

The Governor in Chief lays before the Assembly an Extract of a Letter recently transmitted to him by His Majesty's Secretary of State for the Colonies, by which it appears that the Lords Commissioners of His Majesty's Treasury do not consider that the Imperial Treasury can be held responsible, or is bound to repay the Sums due to this Province by the late Receiver General; under these circumstances the Governor in Chief now communicates to the Assembly a Copy of the Attorney General's Report of the progress made in the Suits and Proceedings instituted in His Majesty's Name for the recovery of that Debt;[2] and he leaves it to the Assembly to take such further steps in this matter as shall be deemed proper.

DALHOUSIE.

Castle of *Saint Lewis,*

Quebec, 31st January 1827.

Extract of a Dispatch from *W. Hill,* Esquire, to *R. W. Horton,* Esquire, dated Treasury Chambers, Thirtieth October One thousand eight hundred and twenty-six.

The Lords Commissioners of His Majesty's Treasury having had under consideration your Letter of the Fifteenth August last, transmitting the Copy of a Dispatch and of its Enclosures, which were received from Lieutenant General the Earl of *Dalhousie,* respecting the Financial Affairs of *Lower-Canada,* and requesting to be favoured with their Lordships' Opinion thereon, I am commanded to acquaint you, for the information of the Earl *Bathurst,* that My Lords cannot admit that the Province of *Lower-Canada* has any legal or equitable Claim upon the Government of the United Kingdom of *Great Britain* and *Ireland* to make good the Loss which has been sustained by the Insolvency of Mr. *Caldwell,* the Receiver General of the Province.

A true Extract.

A. W. COCHRAN, Secy.

31 January, 1827[3]

Relating to the Censure on Sir F. Burton.

The Governor in Chief takes an early opportunity of acquainting the Assembly, that having felt it his Duty to solicit from His Majesty's Government an Explanation of a Dispatch addressed to Sir *Francis Burton,* (but received after his departure from this Province) having reference to a previous Dispatch to him of fourth June, which has already been communicated to the Legislature, and having requested authority to lay such Explanation before the Legislature, or to make

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[1] *Journals of Assembly, Lower Canada, 1827, p. 23.*

[2] In the October term, 1825, a suit had been brought against Caldwell and a judgment for £96,117 was obtained by the Crown. Caldwell attempted to prevent the sale of his property by declaring that the Seigniory of Lauzon was entailed. This supposed entail was set aside.

[3] *Journals of Assembly, Lower Canada, 1827, p. 25.*

some Statement in justification of Sir *Francis Burton*, from the particular Censure for Breach of Instructions conveyed in the before mentioned Dispatch of Fourth June, he has been instructed to take a fit opportunity of making it known, that on Sir *Francis Burton* communicating to His Majesty's Secretary of State the Fact that he had not in his possession the Two Instructions mentioned in the Dispatch of the Fourth June, and as he declared, that if he had been in possession of them, they were so positive that he would have implicitly obeyed them, the Secretary of State has directed the Governor in Chief to have it duly notified, that Sir *Francis Burton* stands entirely acquitted of any blame of having acted at variance with those Instructions.

DALHOUSIE.

3d February, 1827.[1]

Motion for an Address to the Governor relating to the late Receiver-General.

Mr. *Leslie* moved to resolve, seconded by Mr. *De Rouville*, That an humble Address be presented to His Excellency the Governor in Chief, praying that he would be pleased to order to be laid before this House a Copy of the Dispatch from His Excellency referred to in the Extract of a Dispatch from *W. Hill*, Esquire, dated Treasury Chambers, Thirtieth October One thousand eight hundred and twenty-six, annexed to His Excellency's Message of the Thirty-first Ultimo; and also Copies of the Accounts of the Receiver-General transmitted to His Majesty's Government in *England*, since the Accounts of the Receipts and Disbursements of the Receiver-General's Chest laid before this House by Message of Twenty-ninth November One thousand eight hundred and twenty-three; also a Statement of the Receipts and Disbursements of the same since the Date of the last Account transmited to *England*, with an Account of the Cash now actually in the Chest, stating the Place where it is lodged and the security given or taken for its safety, together with Copies of such Instructions or Directions as may from time to time have been received by His Majesty's Government in this Colony, relative to the manner and form of accounting for the Revenues of the Province to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Majesty's Treasury.

Motion in Amendment.

Mr. *Neilson* moved, in Amendment to the said Motion, seconded by Mr. *Fortin*, That the following Words be added thereto and do make part of the said Motion, " And also that His Excellency would be pleased to direct that there be laid before this House any Opinion or Opinions which may have been given by the Law-Officers of the Crown, on the Legal Responsibilities of His Majesty's Receiver-General in this Province, and how far the Laws of *Great-Britain* in regard to Officers of His Majesty's Treasury extend to Officers holding

[1] *Journals of Assembly, Lower Canada, 1827, p. 43.*

Commissions from His Majesty's Government in *England* for the Receipt of His Majesty's Public Revenues in this Province to be accounted for to the Lords Commissioners of His Majesty's Treasury."

The consideration of the Motions postponed.

Ordered, That the further Consideration of the Main Motion and Amendment thereto, be postponed until Monday next.

Wednesday, 7 February, 1827.[1]

Messengers report.

Mr. *Leslie,* accompanied by the other Messengers, reported to the House, that their Address of the Third Instant to His Excellency the Governor in Chief, praying he would be pleased to order to be laid before this House a Copy of a Dispatch addressed to Sir *Francis Burton,* but received after his Departure from this Province, having reference to a previous Dispatch to Sir *Francis* of the Fourth June One thousand eight hundred and twenty-five, and mentioned in His Excellency's Message to this House of the Thirty-first January last, had been presented to His Excellency, and that he had been pleased to give the following Answer:

Gentlemen,

The Governor's Answer.

I have communicated to the House of Assembly the substance of the Dispatches which I have received on this subject from His Majesty's Secretary of State; I feel every disposition to give the fullest information to the House on matters of Public Interest, but I must decline to lay before the Public the Correspondence of His Majesty's Minister with the Executive Government of the Province. I think such a course objectionable in general, and in this particular case inexpedient.

Messengers report.

Mr. *Leslie,* accompanied by the other Messengers, reported to the House, that their Address of the Fifth Instant to His Excellency the Governor in Chief, praying he would be pleased to order to be laid before this House Copies of certain Papers and Documents relating to the late Receiver General, and also the Opinion of the Law Officers of the Crown which may have been given on the legal Responsibilities of His Majesty's Receiver General in this Province, had been presented to His Excellency, and that he had been pleased to give for Answer, that he will comply with the desires of the House.

[1] *Journals of Assembly, Lower Canada, 1827, p. 79.*

10 February, 1827.[1]

House of Assembly,

Monday, 5th Feby. 1827.

Resolved, That an humble Address be presented to His Excellency the Governor in Chief, praying that he would be pleased to order to be laid before this House,

(1) A Copy of the Dispatch from His Excellency referred to in the Extract of a Dispatch from *W. Hill,* Esquire, dated Treasury Chambers, Thirtieth October One thousand eight hundred and twenty-six, annexed to His Excellency's Message of the Thirty-first Ultimo.

(1) The Governor in Chief declines to give a Copy of his Dispatch to His Majesty's Government, the subject of that part of his Correspondence being sufficiently stated by Mr. *Hill,* in his Letter, of which an Extract is before the House.

(2.) Also Copies of the Accounts of the Receiver General transmitted to His Majesty's Government in *England* since the Accounts of the Receipts and Disbursements of the Receiver General's Chest, laid before this House by Message of the Twenty-ninth November One thousand eight hundred and twenty-three.

(2) The Receiver General has stated to the Governor in Chief that he can furnish in the course of a week Copies of his Account Current, stated twice a year, from the Twenty-fifth November One thousand eight hundred and Twenty-three, shewing the gross Amount of all his Receipts and Payments up to the Tenth October One thousand eight hundred and Twenty-six. But the Accounts in detail would employ a Clerk more than a Month, the number of Warrants paid annually averaging eight hundred; and as the abstracts of Warrants issued during each year, together with full statements of all Monies received are already before the Legislature, it appears that further information can hardly be necessary; should it, however, be deemed so, complete sets of the Receiver General's Accounts are lodged in the Audit Office.

(3) Also a Statement of the Receipts and Disbursements of the same since the date of the last Account transmitted to *England,* with

(3) This appears to be part of the former Enquiry, and is answered as above.

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[1]*Journals of Assembly, Lower Canada, 1827, pp. 93-95.*

(4) An Account of the Cash now actually in the Chest, stating the place where it is lodged and the Security given or taken for its safety.

(4) An Account of Cash in the Receiver General's Chest on the First February accompanies this Message. With regard to the security taken for its safety, as His Majesty has not yet been pleased to grant his Commission confirming Mr. *Hale* in the Office of Receiver General, the security cannot be required: but, while acting in that Office, the Governor in Chief has always considered the long services of Mr. *Hale*, his well-known character, his upright integrity, and the large property he possesses in the Province, as affording in the mean time sufficient Security for the Monies intrusted to his care.

(5) Together with Copies of such Instructions or Directions as may from time to time have been received by His Majesty's Government in this Colony relative to the manner and form of accounting for the Revenues of the Province to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Majesty's Treasury.

(5) The general Instructions relative to the manner and form of accounting for the Revenues, have been already communicated to the Assembly, and have been acted upon for many years; should further information be wished for on any particular point the Governor in Chief desires that it may be more distinctly specified.

(6) And also that His Excellency would be pleased to direct that there be laid before this House, any Opinion or Opinions which may have been given by the Law Officers of the Crown on the legal Responsibilities of His Majesty's Receiver General in this Province, and how far the Laws of *Great Britain* in regard to Officers of His Majesty's Treasury, extend to Officers holding Commissions from His Majesty's Government in *England* for the receipt of His Majesty's Public Revenues in this Province, to be accounted for to the Lords Commissioners of His Majesty's Treasury.

(6) The Governor in Chief must decline to lay before the Legislature those Opinions of the Law Officers of the Crown, which have been called for and obtained only for the confidential information and guidance of the Executive Government.

Castle of *Saint Lewis, Quebec*, 9th February 1827.

DALHOUSIE.

5 March, 1827.[1]

Report of Committee on the Receiver General and Sir Francis Burton.

Mr. *Cuvillier,* from the Special Committee to whom were referred His Excellency the Governor in Chief's Messages relating to the Receiver General and to Sir *Francis Burton,* with the Documents accompanying the same, and the Bill for appointing certain Commissioners to inspect the Books of the Receiver General, and to settle and adjust the Public Accounts, and for other Purposes, presented to the House the First Report of the Committee; And he read the Report in his place, and afterwards delivered it in at the Clerk's Table, where it was again read, as followeth:

Your Committee have given to the Message of His Excellency the Governor in Chief, of the Thirty-first January last, respecting His Excellency the Lieutenant Governor Sir *Francis Burton,* all the attention which the importance of the matter referred required.

It appears to your Committee, by that Message, that His Excellency has thought proper to request of His Majesty's Government an Explanation respecting a Dispatch addressed to Sir *Francis Burton,* (but received after his departure from this Province,) relating to a previous Dispatch addressed to him of the Fourth June One thousand eight hundred and twenty-five.

That His Excellency Sir *Francis Burton* arrived in *England* in November One thousand eight hundred and twenty-five, and as the Dispatch in question must have issued from the Colonial Office before his arrival, it must have reached His Excellency the Governor in Chief before the Fourteenth March One thousand eight hundred and twenty-six, on which Day it pleased His Excellency to give your Honourable House communication of that of the Fourth June One thousand eight hundred and twenty-five.

That your Honourable House, deeming it of vital importance to ascertain whether His Majesty's Government had not been induced to entertain a different opinion relative to the Supply Bill passed in the Session of One thousand eight hundred and twenty-five, from that which was expressed in the Dispatch of the Fourth June of that Year, did, on the Third of February last, present an Address to the Governor in Chief, praying His Excellency would be pleased to lay before the House a Copy of the Dispatch addressed to Sir *Francis Burton,* but received after his departure, to which Address His Excellency replied as follows:

" Gentlemen,

" I have communicated to the House of Assembly the substance " of the Dispatches which I have received on this Subject from His " Majesty's Secretary of State. I feel every disposition to give the " fullest information to the House on Matters of Public Interest, but

[1] *Journals of Assembly of Lower Canada, 1827, pp. 294-295.*

"I must decline to lay before the Public the Correspondence of His "Majesty's Minister with the Executive Government of the Province. "I think such a course objectionable in general; and in this particular "case, inexpedient."

DALHOUSIE."

Your Committee are of opinion that your Honourable House, in requesting further information as to the sentiment of His Majesty's Government respecting the Supply Bill of One thousand eight hundred and twenty-five, never for a moment entertained an intention of calling for a justification of the Lieutenant Governor in giving the Royal Assent to that Bill, the conduct of His Excellency in that particular, as well as in the whole of His Administration of this Government, being such as, in the opinion of your Committee, must secure to him the approbation of Our Most Gracious Sovereign, and the gratitude, affection and respect of all Classes of His Majesty's Subjects in this Province.

That by refusing to comply with the Address of this House of the Third February last, praying to have Communication of the Dispatch relative to the Supply Bill, addressed to Sir *Francis Burton*, but received after his departure from the Province, His Excellency the Governor in Chief puts it out of the power of this House to proceed with that full knowledge of the sentiment of His Majesty's Government on this head, which it ought to possess, in order to make a Grant to His Majesty in a way consistent equally with its duty to the Crown, to the People of this Province as its Constituents, and with the Constitutional Privileges of this House.

Your Committee have been unable to find any thing satisfactory in the explanations and reasons assigned in the said Message, as the sole foundation of the revocation of the Dispatch of the Fourth June One thousand eight hundred and twenty-five.

It appears, by the said Message, that His Excellency the Governor in Chief grounds the opinion which he announces on this Subject, upon a Dispatch which he refuses to give your Honourable House Communication.

Your Committee, in the absence of that essential Document, are of opinion that it may be believed, that the justification of His Excellency the Lieutenant Governor does not rest solely upon the reasons adduced in the said Message.

On Motion of Mr. *Cuvillier*, seconded by Mr. *Desaulles*,

The Report committed.

Ordered, That the said Report be referred to the Committee of the whole House on His Excellency the Governor in Chief's Message with the Estimate and Public Accounts.

Dalhousie's Speech on Prorogation.

7th March, 1827.[1]

And then His Excellency was pleased to make the following Speech to both Houses:

Gentlemen of the Legislative Council,
Gentlemen of the Assembly,

The Governor's Speech.

I come to close this Session of the Provincial Parliament, convinced, by the state of your Proceedings, that nothing likely to promote the Public Interest can be now expected from your deliberations.

To you, Gentlemen of the Legislative Council, who have attended your duties in this Session, I offer my thanks on the part of His Majesty, as an acknowledgement of the regard which, by your presence, you have shewn to the welfare of your Country, and also of that proper respect which you have manifested for the Sovereign from whom your honours are derived.

Gentlemen of the Assembly,

It is painful to me, that I cannot speak my Sentiments to you in terms of approbation and thanks. The Proceedings in this Session impose upon me a duty, of which, however unpleasing, I will acquit myself as a faithful Servant of my King, and a sincere Friend to the Province.

Many years of continued discussion on Forms and Accounts have proved unavailing to clear up and set at rest a dispute, which moderation and reason might have speedily terminated. It is lamentable to see, that no efforts or concessions of His Majesty's Government have succeeded in reconciling those differences of opinion in the Legislature; but it is infinitely more so, that differences on one subject should cause a rejection of every other Measure which His Majesty's Government recommends to your consideration.

The Duties expected of you in this Session were not difficult; among the first was an Examination of the Public Accounts of last Year, and a Report upon them, whether of approval or otherwise; has that duty been done so that your Country can know the result?

Have you considered the estimated Expenditure for the current Year, and granted the Supply required in His Majesty's Name? Or have reasons been assigned for the refusal of them, that can be known and understood by the Country? Have the Messages from His Majesty's Representative been duly acknowledged, and answered according to the Rules and Forms of Parliament, or according with the respect which is due by each Branch of the Legislature to the other?

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[1] *Journals of Assembly, Lower Canada, 1827, pp. 318-320.*

Have the Rules or Orders of Proceeding in the House of Assembly been duly attended to, in so far as they affect and recognize the Prerogative Rights of the Crown?

These are Questions, Gentlemen, which you are now to ask yourselves individually, and answer to your Constituents on your return to them.

These are Questions which you are to answer to your Consciences, as men who are bound by Oaths of Fidelity to your Country and to your King.

In my Administration of this Government, I have seen Seven Years pass away without any conclusive adjustment of the Public Accounts; thus accumulating a mass for future Investigation, which must lead to confusion and misunderstanding. In the same Years I have seen the Measures of Government, directly applicable to the wants of the Province, thrown aside without attention and without any reason assigned. I have seen the Forms of Parliament utterly disregarded; and in this Session a positive assumption of Executive Authority, instead of that of Legislative, which last is alone your Share in the Constitution of the State

The results of your Proceedings in this Session have been, the refusal of the Supplies necessary for the ordinary Expenses of Government, the loss of the Militia Bill, the failure of all Provision for the Maintenance of Prisoners in your Gaols and Houses of Correction, for the Support of the Insane and Foundlings, and for the Establishments of Education and Charity, and a total obstruction of Local and Public Improvements.

In this state of things, and with this experience of past Years, it is now no longer consistent with a proper discharge of the high trust committed to me, to entertain hopes of a return to better reason in the Representative Branch of this Parliament; but it is still my Duty to call upon you as Public Men, and to call upon the Country, as deeply interested in the result, to consider seriously the consequences of perseverance in such a course.

I shall conduct the Government with the means in my power, with an undiminished desire to do good; but while I must submit myself to the interruption of all Public Improvement, under the authority of the Civil Government, I will declare my deep regret at such a state of things: I think it right to convey to the Country, a free and unreserved expression of my Sentiments upon these Public Misfortunes; and I will leave no doubt on the Public Mind of my determination to persevere firmly in the path of my Duty, with a faithful regard to the Rights of my Sovereign, with which are also combined the best Interests of the Province.

It only remains for me now, compelled by existing circumstances, to prorogue this Parliament, whatever may be the inconvenience resulting to the Province by such a Measure.

After which, the Honourable Speaker of the Legislative Council said:

Gentlemen of the Legislative Council, and
Gentlemen of the House of Assembly,

Prorogation. It is the Will and Pleasure of His Excellency the Governor in Chief, that this Provincial Parliament be prorogued until Monday the Sixteenth Day of April next; and this Provincial Parliament is accordingly prorogued until Monday the Sixteenth Day of April next.

LOWER CANADA, PAROCHIAL SUBDIVISIONS, 1827.

BILL *for ascertaining, establishing, and confirming in a legal and regular manner, and for Civil purposes, the Parochial subdivisions of various parts of this Province.*[1]

Preamble WHEREAS his Excellency the Governor in Chief hath, by his Message to both Houses of the Provincial Parliament of the 7th February, 1827, being graciously pleased to recommend the necessity of ascertaining, establishing, and confirming in a legal and regular manner, and for civil purposes, the Parochial subdivisions of various parts of this Province; which have from time to time been made by Ecclesiastical authorities alone and whereas it is necessary to relieve his Majesty's subjects from the embarrassment and uncertainty which now exist on this subject, and to provide against the difficulties which must ensue if the boundaries of Parishes are not fixed according to law: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of *Lower-Canada,* constituted and assembled by virtue and under the authority of an Act passed in the Parliament of Great Britain, intituled, *An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of* Quebec *in* North-America *', and to make further provision for the Government of the said Province:* And it is hereby enacted by the authority of the same, that it shall and may be lawful for the Governor, Lieutenant Governor or Person administering the Government for the time being, by a Commission or Commissions under the Great Seal of this Province, to appoint three persons to be Commissioners for enquiring into and ascertaining in the manner herein after mentioned and described, the extent, limits, and boundaries of the Parishes or Parochial subdivisions thereof erected or established

The Governor may appoint three Commissioners for ascertaining the limits of the Parishes.

[1] *Lower Canada Sundries S. 186, folio 6.* This Bill is interesting as illustrating the interrelation of civil and religious interests. It was however, disallowed by the British Government on the grounds stated in a Report of the Attorney General of Lower Canada *(Q. 179, pp. 183-188)* that the power to erect parishes rested with the Crown. *(G. 17, p. 339.)*

by Ecclesiastical authorities alone which may have been informally designated, since the arrêt of His Most Christian Majesty, bearing date the 3d day of March 1722.

Commissioners to give public notice of the time when they shall proceed to take information respecting such limits &c. And to make a Procès Verbal thereof.

II. And be it further enacted by the authority aforesaid, that it shall be the duty of such Commissioners to cause notice to be given to the inhabitants being proprietors of land in the said several Parishes, or subdivisions of Parishes, to be read publicly at the Church-door of such Parishes, or subdivisions of Parishes, on on [sic] a Sunday or *Fête d'Obligation,* immediately after Divine Service, in the morning, that the said Commissioners will proceed at a day to be fixed by them, to take information respecting the limits and boundaries thereof, and to make a report or *procès verbal* of such limits and boundaries, and that such of the inhabitants and proprietors of land in the said Parishes as may consider themselves interested in the said limits and boundaries, shall and may by a petition or representation in writing, addressed to the Commissioners, set forth fully their objections to such limits and boundaries, and the grounds and reasons thereof, which petition or representation the said Commissioners, shall annex to their report or *procès verbal* to be made as is hereinafter prescribed.

The Inhabitants may set forth their objections to such limits, by petition &c.

Commissioners to consult the Bishop of the Parochial Church as to such limits and make a return to the Governor of their proceedings &c.

III. And be it further enacted by the authority aforesaid, that it shall be the duty of the said Commissioners after consulting with the Roman Catholic Bishop or in case of vacancy of the Roman Catholic Episcopal See, with the Administrator of the Roman Catholic Dioeèse of Quebec or such person as may or shall be appointed by him or either of them for the purpose of this Act and having obtained his opinion upon the expediency of the extent and limits of the several Parishes so to be established, if such opinion he may see fit to give in writing, to annex and make a return of such opinion with a *procès verbal* of their proceeding to the Governor, Lieutenant-Governor or Person administering the Government, for the time being, and shall specify therein the boundaries or limits of such Parishes or subdivisions of Parishes as they shall find to exist, and they shall further specify in such return or *procès verbal,* such alterations in the boundaries or limits of such Parishes as shall be represented by any number of the inhabitants of such Parishes or subdivisions of Parishes, to be necessary for the public convenience. And they shall moreover in their said return or *procès verbal* describe and declare the limits and boundaries which they shall think most expedient to be assigned to the several Parishes, or sub-divisions of Parishes, in respect of which return or *procès verbal* shall be made, and it shall be lawful for the Governor, Lieutenant-Governor or person administering the Government thereupon, to issue a Proclamation under the great seal of this Province for the erection of such Parishes or any of them, for civil purposes, and for the confirmation

Such return to contain a description of the limits most expedient to be assigned to the several Parishes.

Governor may issue a Proclamation for the erection of

such Parishes for civil purposes.

and establishment of the limits and boundaries thereof, if he shall have approved the same, which Proclamation shall be and avail as a legal erection and confirmation for all Civil purposes of all the Parishes and Parochial Subdivisions which shall be designated therein, any law, usage or custom to the contrary notwithstanding–

Commissioners authorized to send for and examine documents concerning such limits.

IV. And be it further enacted by the authority aforesaid, that the said Commissioners shall have power and authority to send for and examine, and, if necessary, to take copies of such papers and documents concerning the said limits and boundaries, as shall be in the possession of any officer or officers, or other person or persons whomsoever, civil or ecclesiastical, and if any such person or persons having any such document in his or their possession, shall refuse or neglect to exhibit the same to the said Commissioners, when thereunto required, he or they shall be subject to a penalty of Ten pounds currency, to be recovered by Bill, Plaint, or Information in any of His Majesty's Courts of competent Jurisdiction.

Penalty on persons having such Documents and refusing to exhibit the same.

Governor may appoint Clerks to the Commissioners.

V. And be it further enacted by the authority aforesaid, that it shall be lawful for the Governor, Lieutenant-Governor or Person administering the Government of the Province for the time being, to appoint one or more Clerks or Secretaries to assist the said Commissioners in the performance of the duties and functions which shall, under this Act, be committed to them.

VI. And be it further enacted by the authority aforesaid that it shall and may be lawful to and for the Governor, Lieutenant-Governor, or Person Administering the Government of this Province by Warrant or Warrants under his hand to issue and advance a Sum not exceeding One Thousand Pounds Currency for the purpose of causing this Act to be carried into execution. Provided nevertheless that if after the complete execution of this Act there should remain any part of the said Sum not expended for the purposes of this Act, the said unexpended Sum or Balance shall be and remain at the disposal of the Legislature–

VII. And be it further enacted by the authority aforesaid, that the due Application of the Monies by this Act appropriated, shall be accounted for to His Majesty, His Heirs and Successors, through the Lords Commissioners of His Majesty's Treasury for the time being, in such manner and form as His Majesty, His heirs and Successors shall be pleased to direct.

Reserve of His Majesty's rights.

VIII. And be it further enacted by the authority aforesaid, that nothing in this Act contained shall affect or be construed to affect in any manner or way the Rights of His Majesty, His Heirs or Successors, or of any person or persons, or of any body politic or corporate, such only excepted as are herein mentioned.

IMPERIAL ADMINISTRATION.

Payment of Customs Officials.

Dalhousie to Assembly, Lower Canada, 12 February, 1827.[1]

Downing Street,

28th April 1826.

(Copy)

Circular.

My Lord,

In consequence of Communications which have passed between the Treasury and this Department I have received a Copy of a Minute of the Lords Commissioners of the Treasury of the date of the Twenty-fifth instant, which I herewith enclose, and I have signified to the Lords of the Treasury my entire concurrence in the substance of this Minute. The Lords of the Treasury will immediately give directions to the Commissioners of the Customs to instruct their Officers throughout the Colonies as to the course which they are to pursue in conformity with the Provisional modification of the Law which Their Lordships have adopted under the peculiar circumstances adverted to in their Minute.

I have the honour to be,
&c. &c. &c.

BATHURST.

(Signed)

Lt. Genl. The Earl of Dalhousie,
G.C.B. &c. &c. &c.

Copy of Treasury Minute, dated 25th April 1826.

My Lords resume the consideration of the subject of the Establishment of the Customs in North *America* and the *West Indies,* and read the Letter from the Secretary of State of the Nineteenth March, together with the Communications from the Commissioners of the Customs relating to the payment of the Expenses of those Establishments out of the produce of the Duties of Customs which they are appointed to collect.

My Lords also have before them the Opinions of the Law Officers of the Crown as to the legality of making those Expenses the first charge upon the gross Produce of the Duties received and of paying over the remainder of the net produce to the Receiver General or Treasurers of the several Colonies.

My Lords are fully confirmed by those opinions in their construction of the Law upon which the Minute of this Board of the Ninth December last, and the Letter thereupon to the Secretary of State were founded, and when they advert to all the circumstances connected with the measure introduced by the Government and sanctioned by Parliament in the last Session for regulating the Trade, and the Collection of the Revenue in the Colonies, they cannot admit that any other equitable principle could have been adopted than that upon

[1] *Journals of Assembly, Lower Canada, 1827, pp. 101-103.*

which their Communications to Lord *Bathurst* and to the Commissioners of the Customs were founded, viz: That the charges of the fixed Salaries assigned to the Officers of the Revenue in the Colonies in lieu of the Fees which they formerly received, should be defrayed out of the Revenue which they are appointed to collect. This course appears to My Lords to be the most just and proper, not only because the Colonies are by this change of System relieved of the burden and vexation to which they were heretofore subjected, by the exaction of Fees upon almost every transaction connected with their Commerce and Navigation, but also because the whole object of the measure in question was to open new facilities to the Trade of the Colonies by the removal of impediments which had hitherto counteracted them.

My Lords conceive therefore that in promoting the Acts of the last Session with these views, neither the Government or Parliament can have contemplated the imposition of a new and considerable burden upon the Public Funds of this Country.

On the other hand My Lords cannot but admit that from the Papers now before them it appears that there would be considerable difficulty in several instances in carrying at once into execution the principle of charging the whole of the Salaries of the Revenue Officers upon the Duties collected by them.

In some Cases those Revenues according to their produce in the last year would not be equal to the charge which the proposed Salaries would create, while in most of the Colonies the Sum by which the Revenue would exceed those charges would fall short of that which has been appropriated to certain fixed Expenses of those Colonies made payable out of them by the direction of the Crown.

The difficulties presented by these circumstances appear however to this Board to be rather of a temporary than of a permanent nature. First. Because it is highly probable that a considerable encrease of Revenue will be the result of the facilities given to Trade by the Act of the last Session; and Secondly, Because the rates of Salary now payable being only fixed provisionally (and until My Lords can have a more full report upon the subject from the Commissioners of Customs) they anticipate the practicability of making some considerable reduction in the amount of them.

Under these circumstances My Lords are of opinion that a temporary arrangement may be adopted to meet the difficulties complained of until the full effect of the recent measures shall have been ascertained by experience and the Revenue Establishment of the several Islands shall have been finally regulated.

They propose therefore that the produce of all the Customs Duties in each Colony existing previously to the Fifth January One thousand eight hundred and Twenty-six be ascertained upon the average of the three years ending at that period.

That the Duties collected and to be collected subsequently to that date shall to the extent of that average Amount so ascertained be appropriated as follows: First. One fourth to be retained for the payment of Salaries of Officers. Secondly. Three fourths to be paid over to the Treasurer or Receiver General of the Colony, and that all excess of produce beyond the average Amount so appropriated shall be liable to the charge of the Salaries in the first instance,

and the Surplus, if any, after payment thereof, be made over to the Colonial Officers.

In the charge of the Establishments to be thus defrayed My Lords do not include the Allowances proposed to be made to the Naval Officers on the abolition of their Offices. Although the Fees taken by those Officers were a charge upon the Colonies, yet as their duties were not immediately connected with the Collection of the Revenue, My Lords conceive that under all the circumstances of the case, it may be proper to give to the Colonies the full benefit of the abolition of the Offices, and to defray the charges of these retired Allowances out of the gross Proceeds of the Customs at home.

My Lords desire that this arrangement may be submitted to Lord *Bathurst* for His Lordship's consideration, and for his opinion, before My Lords give directions to the Commissioners of Customs upon the subject.

My Lords also desire that it may be stated to Lord *Bathurst* that it is their wish that this arrangement should be considered as applying to those Colonies only having Colonial Legislatures, as My Lords cannot but hope that arrangements may be made in all the other Colonies by which the whole or a much larger proportion of the expenses of the Custom House Establishment may be borne by those Colonies by this arrangement than is proposed to be borne by the Colonies having Colonial Legislatures.

True Copies.

A. W. COCHRAN,
Sec'y.

CROWN LANDS, UPPER AND LOWER CANADA.

Memorandum.[1]

The land granting Department of Government in this Province has long called for revision, and latterly has been entirely suspended, in expectation of new Instructions from His Majesty's Government for the better regulation of the System

The Honorable M[r] Felton[2] having received a Commission and Instructions, The Governor in Chief lays them before the Committee of the Executive Council requesting an early consideration of them, He thinks it unnecessary to express any opinion upon the Subject at present, as the Instructions detail in the fullest manner the foundation of the System now to be adopted, cancelling & annulling the old System in toto.– The Governor is anxious that no time be lost in establishing this Officer of Government at Quebec, and in publicly notifying the same.–

WASTE LANDS OF THE CROWN.

Commission to W. B. Felton.[3]

Whereas His Majesty by a Commission bearing date the 13[th] day of November 1826 did nominate and Appoint You the said William Bowman Felton to the Office and Trust of Commissioner for the sale and Management of Crown

[1] *Lower Canada Sundries, S. 187, folio 22.*
[2] Peter Robinson obtained a similar commission for Upper Canada.
[3] *Lower Canada Sundries, S. 187, folio 18.*

Lands in the Province of Lower Canada, and did strictly enjoin you to follow such Orders and directions as you might from time to time receive from the Commissioners of His Majesty's Treasury or from any One of His Majesty's Principal Secretaries of State, or from the Governor or Officer Administering the Government of the Province of Lower Canada for the time being. Now We the Commissioners of His Majesty's Treasury do hereby enjoin and require you to govern yourself in the execution of the duties of your said Office by the following Instructions

That you do forthwith repair to Canada; and report your Arrival to the Governor or Officer Administering the Government, and lay before him His Majesty's Commission appointing You to the said Office, & these Our Instructions for the Guidance of Your Conduct in the Execution of the Duties thereof.

That you do immediately upon your arrival enter into Security to the satisfaction of the Governor or Officer administering the Government yourself in £5000 and two Sureties in £2500 each that you will direct and faithfully perform the duties of your said Office, and duly Account for and Pay over all monies which may come to your hands in the execution thereof.

That as soon as possible after your arrival you do proceed to ascertain the Nature and particulars of all the Crown Property within the said Province under the following heads.

Waste Lands in those Districts of the Colony which have not heretofore been Surveyed or laid out.

Waste lands in those Districts of the Colony which have been Surveyed and laid out but no part of which has been granted

Ungranted Lands and Crown Reserve in those Districts where Grants have been made Lands which may have been granted in Perpetuity upon Payment of Quit or other Rents.

Lands and Reserve which have been granted upon Leases for Series of Years upon reserved Rents or otherwise.

That you do make an Annual Report of the Progress you may have made in ascertaining these Particulars to Us or to the Commissioners of the Treasury for the time being, and also to the Governor or Officer Administering the Government of the Province of Lower Canada.

That no Lands or other Crown Reserve arising from Lands within the Province of Lower Canada be hereafter disposed of or Granted except upon the following Conditions

By actual Sale or in Cases of Poor Settlers, by Grants subject to Quit Rents in the manner hereafter directed.

That you do from time to time, and at least once in every Year submit to the Governor or Officer Administering the Government a Report of the Total quantity of [sic] each District of Crown Property within each District of the Reserve so far as you may then have ascertained the same together with your opinion of the quality of each description of Property which it may be expedient to offer for sale within the then ensuing Year and the upset Price per Acre at which you would recommend the several descriptions of Property to be offered obtaining previously a Certificate from the Surveyor General of Woods and Forests within the Province that the Land proposed to be offered by you does

not contain any considerable quantity of Valuable Timber fit for His Majesty's Navy or for any other purposes, it being the intention that no Grant of the Land upon which such Timber, may be growing should be made until the Timber is cleared.

That if the Governor or Officer Administering the Government should be pleased to Sanction the Sale of the Whole or any Part of the Land recommended by you to be Sold at the upset Price recommended by you or at any other Price which he may Name you will proceed to the Sale in following manner

You will give Public Notice in the Quebec Gazette and in such other Newspaper as may be circulating in the Province as well as in any other manner that circumstances will admit of, of the time and Place appointed for sale of the Lands in each District, and of the Upset Price at which the Lots are proposed to be offered, that the Lots will be sold to the highest bidder, and if no offer should be made at the upset Price that the Lands will be reserved for future Sale in a similar manner by Auction

That no lot should contain more than 1200 Estimated Acres

You will also state in the Notices of the Conditions of the Sale That the Purchase money is to be paid by four Instalments without Interest, the First Instalment at the time of the Sale and the second, third, and fourth Instalments at intervals of a Year.

That if the Instalments are not regularly paid, the Deposit will be forfeited and the Land again referred to Sale.

In case Purchasers of Land at any Sale not exceeding 200 Acres being unable to advance the Purchase Money by Instalments as proposed you may permit the Purchaser to occupy the same upon a Quit Rent equal to 5 p^{r} Cent upon the Amount of the Purchase Money One Year's Quit Rent to be paid at the time of Sale in advance and to be paid Annually in advance afterwards upon the failure of regular payment the Lands to be again referred to Auction, and Sold, The Quit Rent upon Lands so purchased in this manner to be subject to Redemption upon payment of 20 Years Purchase and Parties to be permitted to redeem the same by any number of Instalments not exceeding four, upon the payment of not less at any one time than five years Amount of Quit Rent, the same proportion of the Quit Rent to cease In case however the Parties should fail regularly to pay the remainder of the Quit Rent the same to be deducted from the Instalment paid, and the Land to be resold by Auction whenever the Instalment may be absorbed by the accruing payment of the remainder of the Quit Rents.

That Public Notice should be given in each District in every Year stating the Names of the Persons in each District who may be in Arrear either for the Instalments, of their Purchase or for Quit Rents and that if the arrears are not paid up before the Commencement of the Sales in that District for the following Years That the Lands in respect of which the Instalments or Quit Rents may be due will be the first Lot to be exposed to Auction at the ensuing Sales & if any Surplus of the Produce of the Sale of each Lot should remain after satisfying the Crown for the Sum due, the same will be paid to the Original Purchasers of the Land who made default in Payment

That no Land be granted at any other time than at the Current Sales in each District except upon application from Poor Settlers who may not have

been in the Colony more than 6 Months preceeding the last annual Sale; That Settlers so circumstanced may be permitted to purchase Land not exceeding two hundred Acres each at the price at which it may have been offered at the last annual Sale, and not purchased and may pay for the same or by Quit Rent computed at 5 p^{r} Cent on the Sale Price and thenceforth these Persons shall be considered as entitled to all the privileges, and be subject to the same obligations as they would have been subject to, if they had purchased the Land at the last Sale.

In cases of Settlers who shall be desirous of obtaining grants of Land in distinct Districts not surveyed or in Districts in which no unredeemable Grant shall have been made, you will under the Authority of the Governor at any time within a period of seven years from the date hereof grant permission of Occupancy to any such Settlers for Lots of Land not exceeding 200 Acres upon consideration that they shall pay a Quit Rent for the same equal to 5 p^{r} Cent upon the Estimated Value of the Land at the time such Occupancy shall be granted & the Persons to whom claim of occupation may be made shall have liberty to redeem such Quit Rent at any time before the expiration of the seven Years upon the payment of 20 Years purchase of the amount and at any time after the termination of the Seven Years upon the payment of any Arrears of Quit Rent which may be then due and 20 Years purchase of the Annual Amount of the Rent.

That no Patent shall be granted until the whole of the Purchase money shall have been paid nor any transfer of the property made except in case of death until the whole of the arrears of the Instalments or Quit Rent shall have been paid that the Purchase money for all Lands as well as the Quit Rents shall be paid to you, or to such Persons as you may appoint at the times and Places to be named in the Condition of the Sale you will also apply to all persons holding Lands from the Crown in Perpetuity upon the payment of all Quit Rents as well as to all persons holding Lands upon Lease for term [sic] of Years for the payment of the Arrears which may be due from them respectively and you will at any time within 7 Years from the date hereof sell to the Proprietor at 20 Years purchase any Lands held in free & common Socage/but to no other Person whatever/any Quit Rent which may be payable by them respectively, provided that all Arrears up to the end of the Year preceeding the time of purchase be previously paid.

If these Quit Rents are not purchased by the proprietor within the period of 7 Years from the date hereof, Further Instructions will be given in regard to the Sale by Public Auction or otherwise as may then be deemed expedient.

With respect to the Lands upon Lease for terms of Years you are desired on no Account to sell the same by Public Auction if the rent is not more than two Years in Arrear, until the termination of the Lease, but if the Rent is more than two years in Arrear, and if according to the Terms of the Lease the same is void, in consequence of the non payment of the Rent you are at liberty to submit to the Governor or Officer administering the Government, that any such Lots should be sold. If however previously to the Sale the Rent is paid up, you will withdraw the Same from the Sale And you will, at any time Sell to the Lessee of Such Lands as may be held under Lease at such Price as the Governor or Officer Administering the Gov^{t} may upon your recommendation approve of

the Land so held all arrears of Rent being in every case paid up to the end of the year preceeding the Sale, but in no Case at less than 20 Years purchase of the Rent.

You will on the 1st January and 1st July in every Year render a Complete Account of all your Sales within the preceeding half year to the Auditor of Provincial Accounts, specifying the Conditions upon which each Lot is sold, and you will at the same period render a complete Cash Account of the Money received and Expended by You within the same period carrying forward to each Account any Balance which may remain in your hands at the date of the preceeding Account And you will on the 1st January, 1st April, 1st July and 1st Octr in each Year pay over to the Receiver General of the Province any sum which may on those days respectively be in your hands over & above the sum of £500 which you are permitted to retain for Future Contingent Expences

You will not charge the Salary & Remuneration to which you are entitled under your commission in your Accounts, but you will receive the same Annually by Warrant of the Govr out of the Treasure, which you may have paid into the Hands of the Receiver of the Province in the preceeding Year

You are authorized to incur and defray such Contingent Expences for authorities, Clerks, Treasurer & receiver of Rents Office Rent &c, as you may find absolutely necessary, and as the Governor or Officer Administering the Government may Sanction and approve provided however that the whole of such Contingent Expences shall not exceed 1/6 part of the Money to be received by you under His Majesty's Commission and these our Instructions

That you do transmit to Us or to the Commissioners of the Treasury for the time being Copies of the Half Yearly Accounts which you may Render to the Auditor of Provincial Accounts in Canada, and that the same be transmitted by the first direct conveyance which may offer after the periods they are respectively rendered.

That in the execution of the duties of the said Office you do obey all such Orders and Directions as you may from time to time receive from Us, or the Commissioners of the Treasury for the time being from any one of His Majesty's Principal Secretaries of State, or from the Governor or Officer administering the Government.

Whitehall Treasury Chambers the 13th day of November 1826.

/sd/ { LOWTHER
G C. H. SOMERSET,
MOUNT CHARLES.

NATURALIZATION BILL, UPPER CANADA.[1]

AN ACT *to provide for the Naturalization of such Persons resident in this Province, at the period therein mentioned, as may not now be entitled by Law to be regarded as Natural Born Subjects of His Majesty.*

[*Reserved for the Royal Assent.*]

WHEREAS many persons have become resident in this Province who have emigrated from the United States of America since the year one thousand seven hundred and eighty-three, and have not been Naturalized as British subjects by any act of Parliament;–and whereas, there are also in this Province many persons who have come from other foreign countries, and many reduced officers and soldiers of foreign corps, late in his Majesty's service, who are not subjects of His Majesty, by birth or naturalization: And whereas, of the persons above described the greater number came to this province intending to become permanent settlers therein, and having been formerly considered to be entitled to all the rights of subjects, have been heretofore permitted to exercise the same, and from the impressions which have formerly very generally prevailed with respect to the civil rights of persons emigrating to this Province, it would be difficult to provide an adequate remedy by any other than a general provision: And whereas, by an act of the parliament of the United Kingdom of Great Britain and Ireland, passed in the 7th year of his present Majesty's reign, entitled, "An act to amend so much of an act of "the thirty first year of his late Majesty as relates to the election of Members to serve in the legislative assembly of the Province of Upper Canada," it is enacted, that all persons naturalized by any act of the Legislative Council and Assembly of the Province of Upper Canada, assented to by His Majesty, his heirs or successors, shall thenceforth be and be deemed competent in the law to be summoned to the legislative council of the said Province of Upper Canada, and to vote at the elections of Members to serve in the Legislative Assembly of the said Province, and to be elected at any such election: And whereas it is expedient that all the persons above described, who at the time of the passing of the said act were resident in this Province should be naturalized in the manner hereinafter mentioned.

Be it therefore enacted, &c, That all persons actually domiciled in this Province on the 26th day of May, 1826, who are not now legally entitled to be regarded as natural-born subjects of His Majesty, but who have inhabited and resided in this Province, or elsewhere within His Majesty's dominions, for the space of seven years next before the twenty-sixth day of May, in the year aforesaid, without having been, during that time, stated residents in any foreign country, or who, being actually domiciled in this Province, on the said 26th day of May, in the year aforesaid, shall continue to reside therein until they shall have been resident inhabitants of the said Province, or of some other part of His Majesty's dominions, for the space of seven years continually, without having been during that time, stated residents in any foreign country, and who being of

[1] From a bound copy in the Public Archives. This Act is generally known as the Naturalization Bill of 1826 but it was not introduced into the Assembly until 5 December of that year and was not passed until 5 February 1827. It was then sent to the Council whence it was returned on 13 February. Prorogation took place on 17 February. See *Journals of Assembly Upper Canada, 1826-27,* and *Q. 344, p. 119.*

either of the descriptions of persons above mentioned, shall take and subscribe the oath in the Schedule to this act annexed, marked A. or being of those persons who, by the laws of this Province, are allowed to affirm in civil cases, shall make affirmation to the same effect, before some one of the persons duly authorised under the provisions of this act to administer such oath, or take such affirmation, shall be deemed, adjudged, and taken within this Province, to be, and so far as respects their capacity at any time heretofore to take, hold, claim, recover, convey, devise, or transmit any real estate in this Province of any kind or nature whatever, to have been, His Majesty's natural born subjects to all intents, constructions, and purposes, as if they and every of them had been born within this Province.

II.– *And be it &c.* That every person claiming to be naturalized under this act shall be deemed and taken to have renounced freely and for ever, without reservation, all allegiance to any foreign state or power.[1]

III.– *And be it &c.* That any person who shall wilfully swear falsely or make false affirmation in regard to any matter to which he may swear or affirm under the provisions of this act, shall be deemed guilty of wilful and corrupt perjury, and that every such person shall, on conviction thereof, forfeit all the privileges and advantages which he would otherwise have been entitled to under this act; but that the rights of others in respect to estates derived from or held under such persons shall not be thereby prejudiced.

IV.– *And be it &c.* That from and after the passing of this act it shall be in the power of the Governor, Lieutenant Governor or person administering the Government of this Province, to appoint by instrument under his sign manual, from time to time, in each and every District of this Province, such and so many persons as to him may seem meet for administering the oaths and taking the affirmations required by this act, and that each and every of such persons, so to be appointed, shall administer the oath or affirmation by this act required to any person above the age of sixteen years who shall desire to take the said oath or make such affirmation for the purposes intended by this act, and shall keep books of registry, in the beginning of which shall be written the oath and affirmation required by this act, and which shall contain the columns and specifications described in the second Schedule to this act annexed, marked B, and that in the column appointed for that purpose, the person making the oath or affirmation shall set his signature, or, if unable to write, his mark, in the same line of the register in which entry is made of the name and description of such person.

V.– *And be it &c.* That duplicate books of such registry shall be kept, both of which being originals shall contain the actual signatures or marks of the person Subscribing, and that on or before the thirty-first day of December in each and every year, the person making and keeping the said register shall deposit one of the originals thereof in the office of the Clerk of the Peace of the District where such persons shall reside, and transmit the other original register for the same year to the Secretary of the Province for the time being–

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[1] *7 Geo. IV, Cap. 68.*
[2] *See below, p. 362.*

and that the said books of registry shall remain and be preserved as public records in the said offices respectively.

VI.– *And be it &c.* That if from any casualty either of such original registers or any part thereof shall be lost or destroyed, it shall be supplied by a copy taken from the other original of such register remaining in the office of the Clerk of the Peace, or Secretary of the Province, (as the case may be) and attested as a true copy upon the oath of the officer having custody of the same, made before any Commissioner for taking affidavits in the Court of King's Bench, which copy, so attested, shall be regarded to all intents and purposes as the original register.

VII.– *And be it further enacted &c.* That a copy or extract taken from any book of registry made under the authority of this act of the whole entry made in such register with respect to any person whose name is recorded therein, and certified by the Clerk of the Peace, or Secretary of the Province for the time being, or their respective deputy or deputies, or by the person keeping such register, before the same shall have been transmitted to the Clerk of the Peace or Secretary, shall be deemed and taken to be sufficient evidence of the naturalization of the person therein described.

VIII.– *And be it further enacted &c.* That no person who, on the said twenty-sixth day of May, in the year of our Lord 1826, had been resident in this Province, or elsewhere in His Majesty's dominions, as aforesaid, for the space of seven years, shall be entitled to the benefit of this act, unless he shall take the oath, or make the affirmation and subscribe the record thereof required by this act, on or before the first day of March, which will be in the year of our Lord 1830; and that no person who, being resident in this Province on the said twenty-sixth day of May, had not then been resident therein, or elsewhere in His Majesty's dominions as aforesaid, for the space of seven years, shall be entitled to the benefit of this act, unless he shall take the oath, or make the affirmation, and subscribe the record thereof required by this act, within the space of three years from the completion of his residence for the space of seven years, as aforesaid. Provided always nevertheless, that if any person, at the time of his being entitled by residence to claim to be naturalized under this act, shall be under the age of sixteen years, it shall and may be lawful for such person to avail himself of the provisions of this act, at any time within three years after his attaining the age of sixteen years.

IX.– *And be it further enacted by the authority aforesaid,* That if any person not entitled to be regarded as a natural born subject of His Majesty, who on the twenty-sixth day of May one thousand eight hundred and twenty-six was domiciled in this Province, shall die before the period limited by this act for his taking the oath according to the provisions thereof, such person shall be nevertheless deemed to have been a natural born subject of His Majesty so far as regards the holding and transferring of any real estate by devise or inheritance.

X.– *And be it further enacted &c.* That after the first day of January in the year of our Lord one thousand eight hundred and forty-five, the several

officers to whom it shall belong, shall without delay, transmit the registers then remaining in their custody to the Secretary of the Province and the Clerks of the Peace respectively as directed by this act, and that after the said first day of January no further oaths shall be administered, or proceedings had for the purpose of being naturalised under this act.

XI.– *And be it further &c.* That whenever any of the persons appointed to administer the oaths and make the record thereof required by this act shall transmit any book of registry to the office of the Clerk of the Peace or to the Secretary of the Province, as hereinbefore provided, he shall at the end of such book of registry verify the same on oath, to be taken before some one of His Majesty's Justices of the Peace, in which he shall depose that such book of registry forms a true and correct record of the statements made to him by the several persons therein described and which they severally verified by oath or affirmation taken before him.

XII.– *Provided always, and be it further, &c.* That if any person to whom it shall belong to attest the truth of any such record, shall neglect or omit to attest the same in manner aforesaid, he shall forfeit and pay the sum of £200, to be recovered by information in His Majesty's Court of King's Bench; but such omission shall not prejudice the right of any person who may have taken the oath or made the affirmation required by this act, or preclude him from receiving a certificate or extract according to the provisions thereof.

XIII.– *And be it &c.* That a general alphabetical list shall be made and kept by the Secretary of this Province and the several Clerks of the Peace, of the surnames and Christian names of all persons whose names and descriptions are recorded in the several books of registry, referring to their place in such books respectively– and that such list and books shall be open at all times to inspection, during the hours of business in such office, and that any person desirous of searching in the said list or books, shall pay to the officer keeping the same one shilling for each person whose name he shall desire to search for.

XIV.– *And be it further enacted &c.* That nothing in this act contained shall be taken to repeal or in any manner alter or affect any statute passed by the Legislature of this Province respecting the qualifications of voters for Members to serve in the Assembly of this Province or the eligibility of members to serve in the said Assembly or in any manner to affect or interfere with a certain act of the Legislature of this Province passed in the 54th year of His late Majesty's Reign, entitled, "An Act to declare certain persons therein described Aliens and to vest their estates in His Majesty"[1] or with any proceedings had thereupon, or to repeal any laws now in force in this Province for the Naturalization of foreigners.

XV.– *And be it &c.* That from and after the passing of this act, no person shall be disturbed in the possession or shall be precluded from the recovery of any lands tenements or hereditaments in this Province, on the ground of his or her being or having been an Alien, or on the ground of any person from

[1] 54 Geo. III cap. 9. This statute was a war measure directed against those who left the Province to return to the United States. By a statute of 1828 (9 Geo. IV cap. 1) it was ordered that no new commissions of forfeiture under this act should issue, after July 1.

or through whom he or she may claim, being or having been an Alien, provided the person against whom such disability shall be so objected, being a female, was resident in this Province on the twenty sixth day of May, one thousand, eight hundred and twenty six, or being a male, was resident in this Province on the twenty sixth day of May aforesaid, and was then actually under the age of sixteen years.

XVI. *And be it &c.* That in all cases where any person claiming to hold as next entitled on account of any person nearer in the line of descent having been an Alien, shall in virtue of such claim, have taken actual possession of any real estate before the passing of this act and have made improvements thereon, and also in all cases where any person claiming to hold as next entitled on account of the person nearer in the line of descent having been an Alien, shall have actually sold or departed with, or shall have actually contracted to sell or depart with his real estate before the passing of this act, no person being at the time in adverse possession of the same, the provisions of this act shall not extend to render invalid any right or title to such estate but such right or title shall be taken and adjudged to be, as if this act had not been passed.

A

I do swear, (or being one of the persons allowed by law to affirm in civil cases, do affirm) that the entry in this book of registry contained, in one column of which entry I have subscribed by name, or set my mark, (as the case may be) is true in every particular to the best of my knowledge and belief; and that I have resided seven years in His Majesty's dominions without having been, during that time, a stated resident in any foreign country; and that I will be faithful and bear true allegiance to the Sovereign of the United Kingdom of Great Britain and Ireland, and of this Province as dependant thereon.

B

Names.	When born.	Where born.	Father's Name.	From what place removed to this Province	At what time	Present residence	Addition degree or occupation.	Signature.	Date of Registry.	No. of entry.

No. 5. MAITLAND TO BATHURST.[1]

Ex. Government.

UPPER CANADA

YORK 3rd March 1827.

MY LORD,

I have the honor to refer to your Lordship two Bills, which have been passed by the Legislative Council and Assembly of this Province in their last Session: the one for conferring Naturalization is necessarily reserved for the signification of His Majesty's pleasure, according to the provisions of the Imperial Statute of last year; the other, for confirming titles to real Estates derived through Aliens, I have also reserved because Your Lordship's despatch of the 31st of August[2] last, appeared to require it, and because the object of this Bill is of much importance to the people of the Colony.

Besides the engrossed Copies of these Bills on parchment, I send with this despatch another Copy containing in the margin remarks furnished by the Attorney General, explanatory of some of the Clauses; and I also annex a Copy of Your Lordships despatch to me of the 31st of August, in order that the whole subject may come the more conveniently under one view before Your Lordship.

The bill providing for the naturalization of such persons resident in the Province at the time of the passing of the Imperial Act of last Session as are not now legally entitled to be regarded as His Majesty's natural born subjects, met with much opposition in the House of Assembly, where it was long debated, and at length carried by a Majority of four–No amendments were proposed to it in the Legislative Council.

On comparing its provisions with Your Lordship's instructions to me, which are above referred to, it will be found that there is no material variance between this Bill and the one contemplated by your Lordship as best calculated, in the view of His Majesty's Government, to afford the protection desired. The reasons, and the extent, of any departure are explained in the Attorney General's remarks; and as I am desirous to see this question set at rest, I trust the Bill will appear to be sufficiently in conformity with the sentiments entertained by His Majesty's Government, and that it will be speedily returned with His Majesty's assent.

The urgent necessity for an enactment of this kind is fully known to Your Lordship. The numerous Addresses presented to me last year and communicated to Your Lordship, sufficiently shew the disappointment of the people at the obstacles thrown in the way of a .....[sic] desire to substitute an inadmissible declaratory law for the more proper and effectual remedy proposed. They declare also the confidence entertained by the people that His Majesty's Government will persevere in obtaining for them the relief which their situation

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[1] *Q. 344, pp. 46-61.*
[2] See *above p. 305.*

requires– Until very lately no contrary sentiment has been expressed to me, by any portion of the people.

Before the Legislature met this year, and before Your Lordship's despatch of the 31st of August last had been made public, a petition, of which I annex a Copy, to this despatch, was presented to me.– It was signed by many most respectable inhabitants of the Province who have been long resident here, and who pray, (as Your Lordship will observe) to be naturalized upon taking the Oath of Allegiance and having their names registered with the Clerk of the Peace, provisions substantially the same as those required by Your Lordship's despatch.

Another petition was also presented during the Session of the Legislature, and after Your Lordship's despatch, communicated by me to the Assembly had been published–Referring to the conditions suggested in that despatch the petitioners express their perfect satisfaction with them, and pray that a Bill may pass in conformity with the declared Sentiments of His Majesty.

Such I am persuaded is the desire of all who have been left to judge for themselves, and I have no doubt that the great body of these people are waiting with anxiety, but with perfect confidence in the Government for the disposal of this measure, which so deeply concerns them.

During the discussion of the Bill petitions were circulated through the Country with great industry, and a number were presented to the Legislature, signed by many persons who had no connexion whatever with the measure, and by many, no doubt, who were entirely uninformed, or intentionally misled as to the objects of the bill depending and the nature of its provisions. I regret these efforts, which are indeed still continued at the instigation of a few individuals who see with reluctance a question about to be set at rest which they have endeavoured most ungenerously to make the occasion of much clamour and popular excitement. They may lead His Majesty's Government almost to hesitate whether the rights of natural born Subjects can with safety or propriety be conferred on persons who seem unwilling to acquire them on such reasonable terms.

But I trust your Lordship will concur with me in thinking that a remedy which is required and deserved by a large and very worthy portion of our population ought not to be withheld from them on account of the unreasonable opposition of others who if they are merely misled in a matter so plain prove themselves to be the too easy instruments in the hands of bad men, and if on the other hand they do of their own suggestion suspect any design in a measure obviously intended only for their good, must be confessed to have been by no means worthy of the protection which they have ever received from His Majesty's Government. I am led to these remarks by observing in the public prints that great exertions are making to procure signatures to a petition against the confirmation of the Bill.

If these efforts should succeed, and if the representations made should be of a character to entitle them to serious attention, and to occasion doubt on the part of Your Lordship, as to the feelings which may have prompted them, I know not how the petitioners could be more justly dealt with than by suffering the bill to go into immediate operation for the protection of all those who desire it, and to exempt from its operation by a short enactment of the Imperial Parliament, all who have by petition expressed their repugnance to it. Confirming their titles to lands, and leaving them to apply for admission by private bills to the other rights of natural born Subjects; which bills might be required to be preceded by a recommendation of the Government, and might be passed in such terms as His Majesty might approve.

I do not by any means press a discrimination which would doubtless make the unreasonable opposition of these persons occasion no little inconvenience to themselves, but I suggest it as an alternative far more just and desirable than to allow their opposition to stand in the way of the interests of all those who acknowledge the justice of their Government, and wish to avail themselves at once of the relief provided for them.

Your Lordship will find by recurring to my despatch of the 15th March last on this subject with its enclosures, that conceiving Your Lordships instructions would have warranted me, and anxious in common with every Member of my Government to afford the readiest and fullest relief upon the most convenient terms, I should have consented last year to a measure for naturalizing all persons settled in this Province without regard to their length of residence, without exacting any oath or registry of their names and without any express declaration that their Allegiance to a foreign state must be considered or renounced.

To a measure of this kind it is now stated no objection would be entertained, though I know not how much confidence can be placed in such assurances, when it is certain that the same efforts were made last year to render such a Bill unacceptable to the people, as are now employed to prejudice the reception of that which has been recommended by His Majesty's Government–

I now learn that the provisions of the bill against which it is attempted to excite a feeling of dissatisfaction are principally those which the King's Government, upon a review of the whole case, has thought it reasonable and necessary to require, and which although I would (perhaps in your Lordship's judgement erroneously) have agreed to dispense with them. I cannot but admit are such that they cannot with any shew of Justice or reason be complained of– They are indeed of that nature that the objections which are unexpectedly urged against them, lead inevitably to a strong Conviction of their propriety.

The provisions for registry are made as convenient as possible to the party, and are intended to furnish him without expense with a record conclusive of his right to be regarded as a subject– The Oath of Allegiance is the ordinary Oath which no one ought to feel repugnance to take, and which indeed many of the persons concerned must have taken already–

The declaration contained in the second clause does but express a sentiment which every person ought to entertain who seeks to be admitted not merely to the capacity of holding property, but to the exercise of every political power and privilege.

To object to any of these provisions must appear to His Majesty's Government so unreasonable, that I do much regret the effect which the urging such objections may have in giving rise to an opinion unfavorable to the American Class of our population, and in producing the impression that while they claim a right in Common with natives of His Majesty's Dominions to partake freely in every Act of legislature [sic] and Executive power, they deny the obligation to maintain an absolute, perpetual and undivided Allegiance to the Sovereign.

Such a feeling has indeed been openly avowed by some of those who are most active in prejudicing persons against the Bill, but Your Lordship will readily conceive that if I could suppose it did by any means pervade the mass of the people who have come from the United States, I could never on any consideration have felt myself justified in the endeavour I have made to have civil rights conferred upon them without reserve.

Of these people many have lived from twenty to thirty Years in the Province, sustaining during that time good characters as peaceful, Obedient and loyal subjects– A great proportion of them are of Dutch and German descent; these with Numbers of Quakers chiefly from Pennsylvania have formed flourishing Settlements; their industry and steady habits have been conspicuous their religious scruples have prevented their bearing Arms, but in all respects their conduct generally has deserved the favor and good opinion of the Government. Of the others many were during the last War as active and as devoted to the defence of the Country as any other inhabitants of the Province. With the knowledge of these facts, I regret exceedingly that the busy misrepresentations of a few persons of whose claim upon the Government but little could be said, should have any tendency to place the great body of these people in any other light than that which a long course of good conduct has deserved.

That during the last War there were exceptions to the meritorious conduct I have spoken of cannot with truth be denied– It was natural there should be, and in no other Country and among no other people similarly circumstanced would it had been otherwise.– A knowledge of this fact most probably induced His Majesty's Government, so long ago as 1815, to convey particular in-

structions to restrain the indiscriminate admission of American Settlers. From this moment began in this Province the agitation of a question which circumstances have not called into discussion in other Colonies– and which I trust will now be finally and at once set at rest.

I beg to call your Lordship's particular attention to the annexed Copy of a despatch from your Lordship to M^r^ President Smith so long ago as the year 1817,[1] with the report of the Attorney General of this Province upon it: and these documents with the correspondence which has at various times passed on this subject, and particularly my despatch of the 15^th^ of March last, with its enclosures, in which the progress of this question has been reviewed, will shew, I am convinced, most satisfactorily the unwearied attention with which the Government has ever applied itself to the protection of the American Settlers.– They will serve also to shew that even before the late solemn decisions in England with respect to the rights of American Citizens, a correct view was taken of their situation by the Government, and every means in their power employed to avert the inconvenience to which they appeared to be exposed.

I will add that if in the bill now passed there is anything which Your Lordship can consider unjust, or any thing which ought to be looked upon with repugnance by the persons whom it is intended to serve, I should rather great inconvenience were suffered than that any such measure should be confirmed, but if your Lordship sees no reason to believe that the measure recommended by His Majesty and acceded to by the Legislature is either imprudent or improper, it is really of pressing necessity that it should be returned assented to with the least possible delay.

Until this security is afforded the proprietors of real Estates are liable to have their titles questioned, as indeed they have been in Civil Actions, and decisions may pass against them which could not be constitutionally reversed– and the recurrence of a general Election to the Assembly which must take place soon would probably if the matter continues unsettled occasion no small ferment, from the objections which might be raised to the qualifications of Candidates and Voters.

It may throw light upon the character of the opposition which has been raised to this measure when I inform Your Lordship that the bill having after much discussion been rejected in the Assembly, in one of its stages, it was, against the vote of those who had supported it, and upon the motion of the most vehement opposers of it restored to the order of the day, and passed at last without an amendment, the latter being evidently unwilling to meet the responsibility they had unexpectedly incurred by endangering the final passing of the Bill.

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[1]See *above, p. 1.*

And it is just towards the people also to state that many have been deluded to sign petitions by the most absurd statements:– they have been told that tithes will follow,– that the Government means to take their lands away– And that if they go back to the United States they will be hanged for treason. The only argument against the measure, which appears to me to have any weight is, that while it is declared by the Bill that the American Settlers will be deemed to have renounced all allegiance to any foreign State if they apply for all the privileges of natural born subjects under the proposed Act, they will yet not in truth be on the same footing as natural born British subjects, inasmuch as they will have the privileges of subjects only in this Province. Of course the Colonial Legislature could confer nothing more, but I should be happy, because I think it just, that the Imperial Parliament would pass an Act giving to all persons naturalized in any Colony, the rights of Subjects throughout the Empire, with the exceptions specified in the 13. Geo. 2nd Cap. 7. in respect to the United Kingdom.[1]

If Your Lordship had not been previously made acquainted with the circumstances of the Colony, the tenor of this communication might lead Your Lordship to suppose that it is only with respect to Settlers from the United States of America that the provisions of the bill in question require to be considered. But there are in truth in the Province many persons who have emigrated from Germany, and many discharged Soldiers of foreign Corps lately in His Majesty's Service, who, having been born Aliens have never been legally naturalized. These persons have not only been received as Setlers by the Government but have been placed and maintained for a time at the public charge, upon lands granted by the Crown. If therefore an invitation to become Settlers here could give claim to any description of our Inhabitants, not to be made subjects, but to be declared subjects, when they are not, as strong a case at least could be stated in their favor as in behalf of those about whom so much discussion has taken place.

That so little occasion has been found to allude to this class of our Inhabitants arises from the fact that they appear to rely with entire confidence upon the kind intentions of the Government towards them– And Your Lordship I am sure will not feel that their situation calls on that account the less urgently for immediate attention.

The whole object and extent of the Bill are apparent, and it is scarcely necessary to remark that it makes no change in the law, takes away no persons right, and decides upon no man's case. Any

[1] Clause VI of this Act reads: "Provided always, and it is hereby further enacted That no Person who shall become a natural born Subject of this Kingdom by virtue of this Act, shall be of the Privy Council, or a Member of either House of Parliament, or capable of taking, having or enjoying any Office or Place of Trust within the Kingdoms of *Great Britain* or *Ireland*, either civil or military, or of having, accepting or taking any Grant from the Crown to himself, or to any other in trust for him, of any Lands, Tenements or Hereditaments within the Kingdoms of *Great Britain* or *Ireland;* any Thing hereinbefore contained to the contrary thereof in any wise notwithstanding." *Imperial Statutes at Large, 1 Geo. 2—25 Geo. 2, p. 341.*

individual who before the passing of this Act required no law to naturalize him, cannot be affected by this Act and has nothing to do with any of its provisions. If on the other hand, he is not now a subject, he has it in his power to become so with but little trouble and at no charge– And if he is in doubt of his own case the means are before him of overcoming all question, and there seems to be little reason to complain when he may avail himself of these means or decline them, at his option.

I have the honor to be,
My Lord,
Your Lordship's
Most Obedient
Humble Servant

P. MAITLAND

The Earl Bathurst K.G.
&c^ra &c^ra &c^ra

HORTON TO MAITLAND.[1]

Private

Confidential

Downing Street

6th July 1827.

My Dear Sir

It may be satisfactory to you to have more information upon the subject of M^r Randal[2] & his petition here, than could be given you in an official letter.

You will be so good as to understand that, quite independent of M^r Randal or his petition, there is an objection to the sanctioning of the Bill passed in Upper Canada, which Lord Goderich would consider as insuperable, & which, unluckily, was not considered at the time when Lord Bathurst suggested the ground work of that Bill. I refer to the abjuration of allegiance called for on the part of the Aliens, which is a question of the most vital importance. In all our negociations with the United States, we have uniformly laid it down as a principle, that no British subject could abjure his allegiance in this Country, notwithstanding his being naturalized in America; & if we sacrifice this principle, so useful & convenient to us in relation to our own subjects, for the sake of the Americans who happen to settle in Canada, you will easily understand that the advantage tells much more one way than the other.

Secondly, Without meaning to deny that much of the opposition to the Naturalization Bill in Canada is groundless & unreasonable, you will entertain a most erroneous notion of opinions in the House of Commons, if you suppose that the Bill, as we now propose to pass it, will not be considered *there* as more satisfactory than the Bill against which these Petitions have

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[1] *G. 63, pp. 136-139.*

[2] Robert Randall accepted a mission to England to procure the disallowances of the Act of 1827.

been directed; & as the most cautious expressions have been employed, to place on the Department here the sole responsibility of the Bill which is now to be practically disallowed, I hope you will consider that the local Government have no cause to be dissatisfied with the course which has been taken.

Believe me
My dear Sir
Yours very truly

R. W. HORTON.

Major General
Sir Peregrine Maitland K.C.B.
&c &c &c

Goderich to Maitland.[1]

No. 7. Downing Street

10 July 1827.

Sir,

His Majesty's Government have had under their consideration the two Bills passed by the Legislative Council and Assembly of Upper Canada in the Month of February last, and which were reserved by you for the signification of His Majesty's pleasure intituled

An Act to provide for the naturalization of such persons resident in this Province at the period therein mentioned as may not now be entitled by Law to be regarded as Natural born Subjects.

An Act to confirm British Subjects in their Titles to real Estates in this Province derived through aliens.

You are aware that a Petition signed by a large number of Persons resident in the Province has been presented to the House of Commons objecting on various grounds to the confirmation of these Bills by His Majesty. The Petitioners represent that the Bills which have been transmitted do not really express the sense of the Legislative Body. The views of the House of Assembly of Lower Canada can of course however be collected only from the Acts and recorded Resolutions of the House itself, and His Majesty cannot attach any authority to the statement which has been made by others of the wishes and opinions of individual Members of this Body. The Petition however sufficiently establishes the fact that a numerous class of the Inhabitants of the Province are dissatisfied with the measures recommended by His Majesty's Government in the year 1826 and subsequently adopted by the Provincial Legislature.

[1] *G. 63, pp. 144-157.* Maitland received this news with disgust. He felt that the disallowance had been unfair to loyal subjects (Q. 344, p. 411, ff) but the Colonial Secretary was not to be moved. On 6 December, 1827, Huskisson wrote. "As I find, from a perusal of the correspondence, that all possible pains & precautions have already been taken to relieve the local Government of Upper Canada from every sort of responsibility with respect to the change of the provisions of the Alien Bill. I have nothing further to add, than to express my hope that the subject may be satisfactorily concluded by the passing of a Bill in Upper Canada in the ensuing Session, in conformity with the instructions of the late Secretary of State." *G. 63, pp. 435-436.*

I cannot too distinctly acknowledge that your Excellency and the Legislative Council and Assembly are not responsible for any misconception which may have been entertained upon this subject. The Bills which you have transmitted are in general framed in conformity with the Instructions which you received, or deviate from those Instructions only on the side of indulgence towards the parties whom it was proposed to relieve. It rests with His Majesty's Government alone to vindicate the propriety of the measures which have been already taken, and of such alterations in them as I am now about to suggest.

It is fit however to observe that before Lord Bathurst's Instructions of the thirty first of August 1826 were written his Lordship had adopted every means in his power to ascertain whether the improvements which he then projected in the Law would satisfy the Inhabitants of Upper Canada; nor were there wanting sufficient grounds to justify the conclusion that all classes of Society in the Province would cordially acquiesce in them. If these expectations have been disappointed the result is to be attributed to circumstances of which Lord Bathurst was unavoidably ignorant, and over which he could exercise no control.

His Majesty's decision upon the Bills which you have transmitted will be suspended, until it shall appear whether the Council and Assembly are disposed to pass other Bills better adapted to produce general satisfaction throughout the Province; and if any such Bills should be received in this Country, His Majesty in Council will disallow those which are at present before him. I proceed to state the general principles which, upon a mature consideration of the subject, it has appeared to His Majesty's Government desirable to embody in the Bills so to be passed.

All persons who have at any time received Grants of Lands from the Provincial Government—or who have held any Public Office in the Province—or who have at any time been admitted by the Provincial Government or its Officers to take the Oath of Allegiance—or who had their settled place of abode in the province before the year 1820 and are still resident there—should be admitted to the privileges of English birth without any condition or qualification.

The Children or more remote descendants of any persons who may now be dead, should be admitted to the same privileges which their parents or Ancestors, if living, could claim.

Any person claiming to exercise any privilege of a British subject who has not yet taken the oath of Allegiance should be required to take that Oath; or, if he be one of the persons whom the Provincial Law relieves from the obligation of taking oaths, should be required to make the corresponding affirmation.

Persons not falling within any of the preceding descriptions, but who have at present their domicile in Upper Canada, having first resorted thither in or subsequently to the year 1820, should, if such

be their wish, be also admitted to the privileges of English birth; subject to the three following conditions—First, That before they enjoy the privileges in question, they should have completed a residence of seven years—Secondly; That they should take the oath of Allegiance, or make the corresponding affirmation. Thirdly, That their names should be registered in some Public office by some time to be fixed for that purpose, in order that it may be known what particular persons have availed themselves of the proposed indulgence.

It will be distinctly understood that the Law should contain no provision whatever respecting the renunciation of any Allegiance or supposed Allegiance to any Foreign State. That question must be decided by the general Law of nations, without being made the subject of any Enactment, either remedial or declaratory.

The proposed Bills must be entirely retrospective. The terms upon which it may be proper to naturalize persons hereafter resorting to Upper Canada, or to any other of His Majesty's Foreign Possessions, will probably, at an early period, engage the distinct attention of His Majesty's Government. The Bills consequently will not interfere with the operation in future of the British Acts of Parliament for the naturalization of certain Foreigners in His Majesty's Plantations: – Neither should they have the effect of repealing certain provincial Statutes,–respecting a particular class of Aliens,–which were passed in the years *1816 and 1817*:–[1]

It remains to advert to certain questions respecting the property of Aliens which may be affected by the proposed Enactments.

There would be no objection to a provision declaring that Lands acquired by any person, or by the Ancestor of any person, naturalized under this Act should not hereafter be claimed by His Majesty, on the ground of any such Person having been an Alien.

It is possible that cases may exist in which the title of private persons to Lands depends upon the foreign birth of some other

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[1] No such Acts appear to have been passed during these years. On 12 February, 1816 Mr. Durand gave notice of his intention to bring in a bill "to authorize His Excellency the Lieutenant Governor to appoint certain Commissioners in each and every District in the Province, for the purpose of ascertaining the names of all persons who, having taken the Oath of Allegiance to His Majesty and since voluntarily absented themselves from their said allegiance during the last war with the United States, may have again returned to this Province, and to provide for the punishment of such persons" (*Journals of Assembly, Upper Canada 1816, p. 15*). No bill however was reported until 21 March, when the Legislative Council sent down one entitled "An Act to punish persons who have violated their allegiance to His Majesty during the late war with the United States of America, and to declare certain persons resident therein to be aliens", (*Ibid. p. 117*). This was amended by the Assembly and sent back to the Council. A conference was called and an agreement reached when the Assembly agreed to forego the last amendment. None the less the bill was not presented to the Lieutenant Governor for the Royal Assent.

In 1817 "An Act to confirm the title of British Subjects to lands in the Province derived from or through Aliens" was passed by the Assembly on 11 March 1817 (*Ibid, 1817, p. 79*) and sent to the Council, but was not returned. Probably the reference above is to 1814 and 1818. The act of 1814 is 54 Geo. 3, cap. 9. "An act to declare certain persons therein described, aliens, and to vest their estates in his Majesty," passed 14 March 1814. This act is directed against those who had left the province to return to the United States, prior to 1 July, 1812. For the termination of this act, see above, p. 354 *note*.

The act of 1818 is 59 Geo. III cap. VII, another act regarding the forfeiture of estates of traitors and of those who fled the Province. It was amended by 2 Geo. IV, cap. VI, (first Session) and was automatically terminated under the provisions of 9 Geo. IV, cap. 1, which put a period to proceedings under 54 Geo. III, cap. 9.

Persons. In all such cases it would seem fit that the Title in future should depend upon, and follow the actual possession of the Property in past times. No person naturalized under the proposed Bills should hereafter be dispossessed of his Lands, on the ground of his own or his Ancestor's foreign birth. On the other hand no person who has been actually dispossessed on that ground should now have his title restored. It would be equitable that these Rules should take effect from the of May 1826,[1] the date of the last Act of Parliament upon this subject.

It would be highly convenient, if such should be the pleasure of the Council and Assembly, to make the questions of property the subject of a distinct Bill, since it is unnecessary to incumber the question of naturalization with discussions which might impede if they did not prevent the success of that measure.

The Inhabitants of Upper Canada will, I trust, recognize in these Instructions His Majesty's desire to promote the welfare of every class of Society in the Province; and the Legislative Council and Assembly will understand, that His Majesty fully appreciates the industry and zeal for the public good manifested by their compliance with the Instructions which, in the last Year, Lord Bathurst conveyed to Your Excellency by His Majesty's Commands.–

I have the honor to be
Sir
Your most obedient
humble Servant

GODERICH

L[t] General
Sir P. Maitland
K.C.B.
&c &c &c

JUDGE OF COURT OF APPEALS.

J. Stuart to Dalhousie.[2]

Quebec, 4th June, 1827.

My Lord,

A much greater delay than I could have wished, and for which I have respectfully to apologize, has occurred in returning an Answer to the proposal which Your Lordship did me the honour to make to me, when at William Henry. The only Cause of hesitation on my part was an apprehension lest the duty of a Judge in Appeal might be considered as necessarily incident to the situation of an Honorary Member of the Executive Council.– From the apprehension, I am relieved by learning from M[r] Cochran, that an Opinion of the Law Officers of the Crown in England was given during Sir Gordon Drummond's

[1] See *above p. 321 note.*
[2] *Lower Canada Sundries, S. 187, folio 109.*

Administration,[1] by which it was held that the obligation of sitting as a Member of the Court of Appeals was not necessarily incident to the situation of an honorary Member of the Executive Council, & that this duty would not devolve on a person in that situation, without a summons for that purpose;– and also by learning from him, that M^r^ Uniacke, the Attorney General of Nova Scotia, under similar circumstances, holds the appointment of Honorary Member of the Executive Council of that Province, without being called upon to exercise the Judicial Functions which by law are imposed on the Executive Council there as well as here. —— Under these Circumstances, I can feel no hesitation in declaring my readiness to render myself useful to His Majesty's Government, to the utmost of my ability, under the appointment which Your Excellency has been pleased to propose to confer on me, in all particulars, except by discharging the duty of a Judge in the Provincial Court of Appeals.–

I have the honour to be, with great respect,

My Lord,
Your Lordship's
Most obliged &
Most faithful
humble Serv^t^
J. STUART.

The Right Hon^ble^
His Excellency The Earl of Dalhousie
&^c^. &^c^. &^c^

I beg to lay this letter before the Committee of Council for their information, and to state that I shall take the earliest opportunity in my power to attend in Council for the express purpose of calling upon the A.G. to take the oaths– at same time if the presence of the Governor in Chief is not essentially necessary for that purpose, the appointment may be made immediately.

D.
6^th^ June 1827.

COURT OF EQUITY, UPPER CANADA.

Bathurst to Maitland.[2]

Downing Street
April 9^th^ 1827.

Sir,

I have received your Despatch dated the 24^th^ July last, N° 29, enclosing a Memorial of the chief Justice and Judges of the Court of King's Bench in Upper Canada.

I am fully sensible of the great importance of the subject to which you have called my attention in that Despatch.

The rapid growth of the population, and the consequent increase in the number of Commercial and other transactions in the Province, must be met, not

[1] On 22 July 1815, Sir Gordon Drummond wrote to Bathurst asking for a legal decision as to whether the honorary members of the Executive Council were entitled to be members of the Court of Appeals. (*Q. 132, p. 254*). In reply it was stated that there was no difference in the functions of regular and honorary members of the council. The latter, however, could only act when summoned, and must serve without salary. (15 November, 1815, *Q. 134, p. 123.*)

[2] *G. 63, pp. 35-41.*

only by a proportionate increase in the number of the Judges, but perhaps also by an enlargement of their jurisdiction. I understand that at present there is no Tribunal in the Country discharging the functions of a Court of Equity, and that there is consequently a failure of justice in those numerous and most important cases which belong exclusively to Courts of that nature. In the probable advance of the Province, the want of a Tribunal competent to execute Trusts, and to protect the Property of Infants, must be felt as an extreme inconvenience.

It has therefore occurred to me as a subject highly deserving attention, whether the judicial Office of Chancellor under the title of Master of the Rolls or Vice Chancellor, might not advantageously be committed for the present, either to the chief Justice or to one of the inferior Judges of the Court of King's Bench. An arrangement of this nature might, if necessary, form the basis of some more systematic arrangement in future times. Your excellency is aware, that a similar measure has been adopted in Nova Scotia, and that under a recent Act of Parliament a system very similar in principle, has been introduced into the Court of Exchequer in England. You will consider and report to me, whether this measure, or any modification of it, could be conveniently adopted in Upper Canada.

I have received His Majesty's commands to convey to you his authority for appropriating a sufficient part of the Revenue of the Crown raised under the Statute 14th Geo. 3d Cap: 84,[1] for the support of an additional Judge of the Court of King's Bench in Upper Canada. I am also to signify to you His Majesty's pleasure, that a further appropriation should be made out of that Revenue for meeting the augmented Salaries of the Chief Justice and Puisne Judges. For your guidance on this subject, I have the honor to transmit to you the enclosed statement exhibiting the present expenditure for the support of the Provincial Judges with the intended augmentation of it.

Although the Revenue of the Crown derived from the Statute 14th Geo. 3, Cap: 84[2] appears to have hitherto been absorbed by the exigencies of the Public service, yet from the information before me, I am induced to conclude, that this Revenue will for the future be equal to sustain this additional burthen. Considering however the essential importance of the object in view, I should not hesitate to authorize you to postpone other objects of a less urgent nature, if the proposed augmentation of the judicial establishment could not be effected without such a sacrifice:

I have not been able to learn with certainty, whether some legal Instrument may not be necessary in order to carry the measure which I have explained to you into full effect. I am not indeed aware, that any thing further would be requisite than the usual warrant under the Sign Manual appointing another Judge, and I may probably be able shortly to communicate to you, that such an appointment has been made. But you will consult the Law Officers of the Crown in the Province, respecting the necessity of obtaining an Act of the Legislature,

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[1] *Really Cap 88. Quebec Revenue Act.*

or of issuing Letters Patent under the Great Seal in Order to render the proposed increase to the number of Judges legal and effectual. If they should be of opinion that any such Instrument is necessary, you will direct them to prepare the requisite Draft, which you will transmit to me, accompanying it with such observations as may have occcurred to you on the subject.

I have the honor to be
Sir,
Your most obedient
humble Servant,

BATHURST.

Sir PERIGRINE MAITLAND
&c &c &c

GODERICH TO MAITLAND.[1]

N°. 8

DOWNING STREET

19. July 1827

SIR

This letter will be delivered to you by John Walpole Willis Esq^re^ Barrister at Law whom His Majesty has been pleased to appoint one of the Judges of the Court of King's Bench of Upper Canada–His Majesty's intention to make this appointment in compliance with the Memorial of the Judges of that Court was specified to you in Lord Bathurst's dispatch of the 9^th^ April last.– In the same dispatch the necessary arrangements were made respecting the Salaries to be allowed to the Judges of the Court–

It has been in contemplation to make provision for the administration in Upper Canada of that part of the Law of England which in this Country is administered as the Court of Chancery, and it is intended to commit that jurisdiction to M^r^ Willis who has practiced for several years in the Courts of Equity–

Some difficulties have, however, arisen which have delayed the execution of this purpose; but I hope to be able shortly to make a further communication to you on the subject–

M^r^ Willis is the bearer of his Commission as one of the Judges of the Court of King's Bench

I have the Honor to be
Sir
Your most obedient
Humble Servant

GODERICH

M. General
Sir PEREGRINE MAITLAND
&c &c K.C.B.

[1]*G. 63, pp. 179-182.*

HUSKISSON TO MAITLAND.[1]

DOWNING STREET

25, November 1827

Duplicate
N° 9

SIR

The Question of the erection of a Court in the Province of Upper Canada for the administration of that part of the law of England which in this Country is administered in the Court of Chancery, having been brought under the consideration of the Law Officers of the Crown, they have reported it as their opinion that there is considerable doubt whether His Majesty lawfully could by Letters Patent under the Great Seal, without the intervention of Parliament, or of the local Legislature, create any new Judge in Equity in Upper Canada. They recommend that if a Judge in Equity be appointed, he should bear the title, not of Master of the Rolls, but of Vice Chancellor to the Governor, observing that the Title of Master of the Rolls might lead to misconceptions in consequence of unfounded analogies which might be drawn between the Office to be created in Upper Canada, and the Ancient Office of Master of the Rolls in England– The Law Officers of the Crown have further suggested whether instead of erecting a distinct & independent Tribunal, it might not be expedient to invest the existing Common Law Court with so much of an equitable jurisdiction as upon due consideration may be thought useful or necessary to the Province, & they observe that this jurisdiction might be exercised as in the Court of Exchequer in England, in the same Tribunal, & by the Same Judges who administer the Common Law.

In consequence of this report it has not been deemed expedient to proceed with the proposed Letters Patent for erecting the Office of Master of the Rolls in Upper Canada. As however the establishment of a Court competent to execute Trusts and to protect the property of Minors, appears indispensable to the due administration of Justice in the Province, you will avail yourself of the earliest opportunity for recommending the Subject to the attention of the Legislative Council & House of Assembly, and you will inform them that His Majesty will be ready to concur in the enactment of any law which may be properly framed for the establishment of an equitable jurisdiction. For the information and assistance of the Legislature, it will be proper to call upon the Attorney and Solicitor General, & the Judges of Upper Canada for a report of their opinion as to the most convenient method of Carrying this object into execution. But whether a New Tribunal be erected or new powers be imparted to the existing Tribunal, the Act ought so to be framed as to require the intervention of the Royal authority to accomplish the purposes of the Legislature. For the principle that all Courts are Courts of the King, and that

[1] *G. 63, pp. 411-418.*

justice is to be dispensed only by Officers commissioned by the King for that purpose, Cannot be too fully recognized, or too strictly inforced. As it appears that Mr. Willis, at present one of the Judges of the Province; quitted this Country upon an understanding that in the event of the erection of a New Court of Equity he was to preside in it, that intention will of course be carried into execution if the Provincial Legislature ultimately should decide upon constituting a Separate Court of Equity. In that event you will consider and report to me, what additional remuneration ought to be allowed for the discharge of these additional duties, and out of what Fund, and in what manner that remuneration would be most properly made.

I have the honor to be
Sir
Your Most Obedient
Humble Servant

W. HUSKISSON

Major General
Sir Peregrine Maitland
K.C.B.

ECCLESIASTICAL CHART.

Strachan to Horton.[1]

19 Bury-street, St. James's, 16th May 1827.

Sir,

I take the liberty of enclosing for the information of Lord Goderich, an Ecclesiastical Chart of the Province of *Upper Canada,* which I believe to be correct, for the present year 1827, and from which it appears that the Church of England has made considerable progress, and is rapidly increasing.

The people are coming forward in all directions, offering to assist in building churches, and soliciting with the greatest anxiety the establishment of a settled minister; indeed the prospect of obtaining a respectable clergyman unites neighbourhoods together, and when one is sent of a mild conciliatory disposition, he is sure, in any settlement in which he may be placed, to form the respectable part of the inhabitants into an increasing congregation. There are in the province 150 townships, containing from 40 to 500 families, in each of which a clergyman may be most usefully employed; and double this number will be required in less than twelve years.

When contrasted with other denominations, the Church of England needs not to be ashamed of the progress she has made. Till 1818 there was only one clergyman in Upper Canada, a member of the Church of Scotland. This gentleman brought up his two sons in the Church of England, of which they are now parish priests. After his death his congregation was split into three divisions, which with another collected at Kingston in 1822, count four congrega-

[1] *Parliamentary Papers, 1827, No. 378.*

tions in all, which are in the communion with the Kirk of Scotland. Two are at present vacant, and of the two Scotch clergymen now in the province, one has applied for holy orders in the Church of England.

The teachers of the different denominations, with the exception of the two ministers of the Church of Scotland, four congregationalists, and a respectable English missionary who presides, of a Wesleyan Methodist Meeting at Kingston, are for the most part from the United States, where they gather their knowledge and form their sentiments; indeed the Methodist teachers are subject to the orders of the Conference of the United States of America, and it is manifest that the Colonial Government neither has nor can have any other control over them, or prevent them from gradually rendering a large portion of the population, by their influence and instruction, hostile to our institutions, both civil and religious, than by increasing the number of the established Clergy. Two assertions have been made respecting the Church of England in Upper Canada, which, if correct, ought certainly to have considerable influence. First, that her Clergymen have no congregations. Now I affirm from personal knowledge, that in the 58 places where regular or occasional service is performed, numerous and respectable congregations assemble. The second assertion is, that in the House of Assembly, consisting of 44 members, only two belong to the Church of England. Now the fact is, that 18 out of the 44 profess to be of the Church of England, for the truth of which I pledge myself, and can, if necessary, furnish the names; the remaining 26 are of various denominations, but certainly not more than three or four Scotch Presbyterians.

The Church of England in Canada, was supported for many years out of the very limited and fluctuating revenue of the venerable Society for Propagating the Gospel in Foreign Parts, which did its utmost to increase the number of the clergy, but its means were so inadequate to the demand, that it was at length obliged to solicit the aid of government to continue and extend its efforts, accordingly a small sum, in aid of its funds, has been for some years voted by the Imperial Parliament, of which Upper Canada receives a portion. How inefficient this aid is to supply the increasing necessities of the colony has been sufficiently shown, for the tendency of the population is towards the Church of England, and nothing but the want of moderate support prevents her from spreading over the whole province.

But it may be asked, why do not the Clergy Reserves afford a remedy?

To make the answer to this question intelligible, a few remarks are necessary.

By the 31st of George the 3d, c. 31, one-seventh of the land in Upper Canada is reserved for the maintenance of a Protestant Clergy; the operation of which provision offers at this time the following results:—The number of townships actually surveyed may be taken at 240, averaging 66,000 acres, one-seventh of which, 9,428, equal 47 reserved lots of 200 acres each, consequently the number of such lots, in 240 townships, is about 11,000, containing $2\frac{1}{5}$ million of acres.

But as these lands partake of the quality of those around them, many lots will be found, from various causes, unfit for cultivation, so that the number eligible for settlement cannot be taken at more than 9,000, containing 1,800,000.

That this provision will at no time be ample for the support of a religious establishment sufficient for the population of Upper Canada when fully settled, will sufficiently appear from the fact, that the whole surface of the colony does not exceed 31 millions of acres, of which not more than 26 are capable of cultivation; one-seventh of this, containing 3,760,000 acres, or 18,800 reserved lots of 200 acres each, will ultimately constitute the whole property set apart for the maintenance of a Protestant clergy. Now, judging from what takes place in the United States, each lot will not produce in a century an average rent of £20 per annum, making a total of no more than £376,000 which, divided among two thousand clergymen (a very small number for a country nearly as large as England) gives only £188 to each.

Hitherto the reserved lands have been inefficient from causes now very obvious, though not perhaps anticipated by the distinguished statesman who advised the appropriation.

These causes are–

1.– The great encouragement given by government to settlers of good character, by bestowing on them land on payment of a trifling fee.

2.– The gratuitous grants of land made to such persons as retained their loyalty during the American revolutionary war, and to officers, soldiers and sailors who served in the late war in Europe and America.

3.– The preference given by the colonists to lands in fee-simple to leases, even where the latter are more advantageous.

4.– The difficulty of collecting rents, from the smallness of the amount charged in each lot, and from being scattered over the whole province.

5.– So long as applicants can get lands of the best quality and in the most convenient situations for nothing, or a mere trifle, the natural consequence is, that rent of lands upon lease is almost nominal.

In regard to the gross rental of the leased lots, it amounts to about £1,200 per annum, and was for a long time swallowed up by the expense of making out the leases necessary to convey the title to the applicant; and though this item of expense has been removed, it is still reduced by the and per centage of the sheriffs, who are employed to collect it, from persons scattered over a surface of nearly 40,000 square miles, so that the net sum actually paid over to the treasurer does not much exceed £400 per annum.

These things pressing forcibly on the minds of the Lord Bishop of Quebec and his Clergy, and on the Lieutenant Governor of Upper Canada and his Council, induced them to seek the power of selling the Clergy Reserves to a limited extent, as well as leasing them, leaving the proceeds to be disposed of as provided for in the 31 Geo. 3. c. 31. and this is the object of the Bill before Parliament.[1]

From this measure they look for many important advantages.

1.– A large portion of the country, now in a manner locked up, would be made free.

2.– The lessees would be more punctual in paying their rents, for fear of losing any claim to renewal or advantageous purchase.

3.– The means would be afforded of multiplying clergymen to any number that might be required.

[1] See below p. 386.

4.– The popular objection against the reserves, as a barrier to improvement and internal communication, would in a great degree be removed.

5.– The Imperial Parliament would in a few years be relieved from the annual grant, in aid of the Society for Propagating the Gospel in Foreign Parts, in as far as respects Upper Canada.

6.– Two or three hundred clergymen living in Upper Canada, in the midst of their congregations, and receiving the greater portion of their income from funds deposited in this country, must attach still more intimately the population of the colony to the parent state. Their influence would gradually spread. They would infuse into the inhabitants a tone and feeling entirely English; and acquiring by degrees the direction of education which the Clergy of England have always possessed, the very first feelings, sentiments and opinions of the youth must become British.

I have, &c.

(signed) JOHN STRACHAN.

ECCLESIASTICAL CHART FOR THE PROVINCE OF UPPER CANADA; FOR 1827.

1.—The Established Church

Districts.	Clergymen.	Townships.	Churches Built or building.	Service.
Eastern District	Rev. S. J. Mountain	Cornwall	neat Church	Regular.
		Williamsburgh	small Church	Regular.
	Rev. J. G. Weagart	Osnaburgh	small Church	Regular.
		Matilda		occasional.
Johnston District	Rev. F. Myers	Edwardsburgh	small Church	Regular.
	Rev. Mr. Blakey	Prescott	neat Church	Regular.
	Rev. John Wenham	Brockville	Church	Regular.
	Rev. Mr. Elms	Bastard	small Church	Regular.
		Younge		occasional.
Bathurst District	Rev. Mr. Harris	Perth	Church building	Regular.
		Lanark		occasional.
	Rev. Mr. Burns	Richmond	Church building	Regular.
Midland District	Archdeacon Stuart	Kingston	Church	Regular.
	Chaplain to the Navy	Navy Point	Church building	Regular.
		Waterloo		occasional.
	Rev. J. Stoughton	Bath	Church	Regular.
		Napane Mills		occasional.
		Fredericksburgh	Church building	occasional.
	Rev. Job Deacon	Adolphus Town	Church	Regular.
		Hollowell	Church building	occasional.
	Rev. Thos. Campbell	Belville	Church	Regular.
	Rev. Mr. Grier	Head of the Bay	Church	Regular.
		Indian Village	Church	occasional.
Newcastle District		Haldemand		occasional.
	Rev. Wm. Macauley	Cobourgh	Church	Regular.
	Rev. Mr. Armour	Peterborough		Regular.
		Porthope	Church	occasional.
	Rev. J. Thompson	Cavan	Church	Regular.
		Whitby		occasional.
Home District	Archdeacon Strachan	York	Church	Regular.
	Dr. Phillips	Younge Street	Church	occasional.
		Purdys Mills	Church building	occasional.
	Dr. Tunny	Newmarket	Church building	occasional.
	Clergyman a Lutheran, now under consideration.	Markham	Church	Regular.
		Etobicoke	Church built	occasional.
		Toranto	Church building	occasional.
Gore District	Rev. R. Leeming	Ancaster	Church	Regular.
		Burton	Church	Regular.
		Dundass		occasional.
		Woolwich	Church	occasional.
		Indian Village	Church	occasional.
Niagara District	Alexander Bethune	Grimsby	Church	Regular.
	Robert Addison	Niagara	Church	Regular.
	Rev. Mr. Creen	Queenston	Church	Regular.
	Rev. Mr. Leeds	St. Catherine	Church	occasional.
	Wm. Leeming	Cheppawa	Church	Regular.
		Short Hills		occasional.
		Fort Erie	Church	Regular.
		Long Point	Church building	occasional.
London District	Mr. Moreley	Indian Village		occasional.
	Rev. Mr. M'Intosh	Kettle Creek	Church	Regular.
		Port Talbot		occasional.
		London	Church building	occasional.
		River Thames		occasional.
Western District	Rev. Mr. Short	Sandwich	Church	Regular.
		Chatham	Church	Regular.
	Mr. Rolph	Amherstburgh	Church	Regular.
		New Settlement	Church	occasional.
Total	30 Clergymen, and one Lutheran under consideration.	58 places where there is regular or occasional service, exclusive of frequent journies taken by the Missionaries to the New Settlement in their neighbourhood.	45 Churches — 10 of them building, and others commencing at most of the places where occasional service is performed.	31 Regular Parishes— 27 Services occasionally.

II.—Ministers of the Independent or Presbyterian Order.

And assuming the Appellation of the Presbytery of the Canadas, but having no Connection with the Kirk of Scotland.

Places of Residence.	Clergymen.	——
Osnaburgh—Eastern District.....	The Rev. J. Johnston.....	Educated principally at Glasgow, ordained in Ireland by the Synod of Ulster, preaches at Cornwall and Osnaburgh Eastern District.
Brockville—Jonnston District.....	The Rev. Wm. Smart.....	Sent out to this country as a Missionary by some Society in London, settled at Brockville, Johnston District, said to be an excellent young man.
Perth—Bathurst District.....	The Rev. Wm. Bell.....	Educated in Scotland, ordained among the Dissenters from the Established Kirk, settled at Perth, in Bathurst District.
Bay of Quinty—Midland District.....	The Rev. Rt. M'Duall.....	Ordained in the United States, settled in the Bay of Quinty, Midland District, has resided in the Province many years.
York—Home District.....	The Rev. James Harris.....	Educated principally at Glasgow, admitted a Licentiate by the Synod of Ulster.
Markham—Home District.....	The Rev. Wm. Jenkins.....	Ordained in the United States for the purpose of residing among the Indians, came lately into the Province and settled in Markham.

III.—Ministers in Communion with the Kirk of Scotland.

Places of Residence.	Clergymen.	——
Williamstown—Eastern District.....	The Rev. John M'Kensie....	Has been about eight years in the Province, and is settled at Williamstown as Minister of a part of the late Rev. John Bethune's congregation.
—District.....	The Rev. John M'Laurie....	Has been about seven years in the Province and is situated at Lochiel, is Minister of another part of the late Rev. J. Bethune's congregation.
Cornwall—Eastern District.....	Vacant.	
Kingston—Midland District.....	Vacant.	

As the Methodists have no settled Clergyman, it has been found difficult to ascertain the number of Itinerants employed, but it is presumed to be considerable, perhaps from twenty to thirty in the whole Province; one from England, settled at Kingston, appears to be a very superior person. The other denominations have very few teachers, and those seemingly very ignorant; one of the two remaining Clergymen in communion with the Church of Scotland has applied to be admitted into the Established Church.

REPLY TO STRACHAN'S CHART.

Report of Select Committee.[1]

Report &c.

To the Honorable the House of Assembly:

The select Committee to whom were referred the petition of Bulkley Waters and others, and various other Petitions of the same tenor, signed by nearly 6000 persons, and also the petition of E. W. Armstrong and others, submit the following report.

The first object of the Committee was to obtain a correct copy of the letter and chart referred to in the petitions.–It will be found in the appendix to this report marked A. It is dated May 16, 1827, and was addressed by the honourable and venerable Doctor Strachan, Archdeacon of York, a Member of the Legislative and Executive Councils of this Province, to the Right Hon. R. J. Wilmot Horton, at that time Under-Secretary of State for the Colonies, for the information of Lord Goderich, then at the head of the Colonial Department. It appears to have been intended as a document for the information His Majesty's Government, upon which important measures on their part with respect to this Colony might have been founded.

Before proceeding to the examination of the statements contained in the letter and Chart, the committee directed the Chairman to transmit to the honourable and venerable Doctor Strachan, a copy of the petition referred to them, and to inform him, that the Committee would be happy to receive from him any information upon the matter submitted to their consideration. A Copy of the chairman's letter and of Doctor Strachan's answer (marked B.) are annexed to this report.–The evidence afterwards received from that Gentleman will be found in the appendix to the minutes of evidence.

The Committee have examined all the members of the House of Assembly whose testimony they could obtain, some members of the Honourable the Legislative Council, of long residence high standing and large possessions in the Province; various clergymen of different denominations in York, and its vicinity, and a few other individuals.

From the evidence it will be perceived that the letter and chart were calculated to produce in many important respects erroneous impressions respecting the religious state of this Province, and the sentiments of its inhabitants. As it seems from Doctor Strachan's evidence that they were drawn up suddenly from memory and without the means of reference to sources of authentic information, it is much to be regretted that these circumstances had not been at least hinted in the letter itself, and the more so when it is considered that as he stated to the Committee he had never known the number of Members of the Church of England in this Province. The assertions in the letter that, " the people are coming forward in all directions offering to assist in building churches and soliciting with the greatest anxiety–the establishment of a settled minister," and that " the tendancy of the population is towards the Church of England, and nothing but the want of moderate support prevents her from spreading over the whole Province ", are completely contradicted by the evidence.

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[1] *Q. 350, pp. 344-366.*

Upon this subject the Committee would remark that the church of England has always had, in this Province peculiar advantages. It has been the religion of those high in office and been supported by their influence and countenanced more than any other Church by the favour of the Executive Government. Its clergymen have had the exclusive right of marrying persons of all denominations indiscriminately. Although by a provincial statute, the justices of the peace in general quarter sessions are empowered, if they shall deem it expedient, to authorise Lutherin [sic] and Calvinist Clergymen and Ministers of the Church of Scotland to marry any two persons of whom one has been for six months previously to such marriage a member of the congregation of the clergyman who performs the ceremony.[1] This right the clergymen of the Church of England still exclusively enjoy, notwithstanding that the House of Assembly has for several sessions successively, by a large majority, passed a bill (which has not been concurred in by the honourable the Legislative Council) to extend this right to the clergymen of christian denominations in this Province generally: the Clergymen of the Church of England have also been liberally supported, and their churches partly or wholly built from the funds of a society in England. The solitary disadvantage mentioned by Doctor Strachan in his evidence before the Committee of being obliged for want of a Bishop resident in the colonies to resort to England, for episcopal ordination has never existed since the province has had its present form of government; for during all that time a bishop has resided at Quebec. Still the number of members of that church has not increased in the same proportion as that of several other denominations. These facts confirm the opinion so generally expressed by the witnesses, that the tendency of the population is not towards that church. The contrary opinion entertained by a few of the witnesses may have arisen very naturally from a considerable increase recently in the number of missionaries of that Church, which however ought probably to be ascribed to the liberality with which salaries for their support are furnished by the society for propagating the gospel in foreign parts, rather than to any strong wish of the people to have clergymen of that church settled among them.

In reference to the aid furnished by this Society (from whose funds an annual salary is paid to every clergyman of the Church of England in this Province, in Priest's Orders, £200 sterling, and in Deacon's orders £100 Sterling) and as an argument for further assistance, it is said in the letter, "How ineffectual this aid is to supply the increasing necessities of the colony has been sufficiently shewn; for the tendency of the population is towards the Church of England, and nothing but the want of moderate support prevents her from spreading over the whole province."

According to the concurring testimony of the witnesses, the members of the Church of England, in this province in proportion to their number have at least equal means of supporting their clergymen with other denominations. The latter have a large number of clergymen in the province. Without any aid therefore from Great Britain the members of the Church of England are able without difficulty to support as many clergymen of their church as the number of their members requires. If however they are not willing to furnish for this

[1] 38 Geo. III, cap. 4. This act was reserved for the Royal Assent which was proclaimed on 29 December, 1798.

purpose the same means which other sects furnish for a similar purpose, there can be but little tendency, even among those who are nominally its members, to the church of England. If they are willing there can be very little necessity for the aid now received from Great Britain and much less for any further assistance unless to carry on a system of proselyting to that Church, the members of other denominations.

The insinuations in the letter against the Methodist Clergyman the committee have noticed with peculiar regret. To the disinterested and indefatigable exertions of these pious men this province owes much. At an early period of its history when it was thinly settled and its inhabitants were scattered through the wilderness and destitute of all other means of religious instruction, these Ministers of the Gospel, animated by Christian Zeal and benevolence, at the sacrifice of health and interest and comfort, carried among the people the blessings and consolations and sanctions of our holy religion. Their influence and instructions, far from having (as is represented in the letter) a tendency hostile to our institutions, have been conducive, in a degree which cannot easily be estimated, to the reformation of their hearers from licentiousness, and the diffusion of correct morals, the foundation of all sound loyalty and social order. There is no reason to believe that, as a body, they have failed to inculcate, by precept and example, as a christian duty, an attachment to the Sovereign and a cheerful and conscientious obedience to the laws of the country. More than 35 years have elapsed since they commenced their labours in the colonies, In that time the Province has passed through a War which put to the proof the loyalty of the people. If their influence and instructions have the tendency mentioned, the effects by this time must be manifest; yet no one doubts that the Methodists are as loyal as any of His Majesty's Subjects. And the very fact that while their clergymen are dependant for their support upon the voluntary contributions of their people, the number of their members has encreased so as to be now, in the opinion of almost all the witnesses, greater than that of the members of any other denomination in this province, is a complete refutation of any suspicion that their influence and instructions have such a tendency; for it would be a gross slander on the loyalty of the people to suppose that they would countenance and listen with complacency to those whose influence was exerted for such base purposes. The number of relative proportion exactly of the members of the different denominations of christians in this province, the committee have not ascertained. In the answers to the 9th 10th and 11th questions will be found the opinions of the witnesses upon the subject. The most correct and full information will be found in the chart in the appendix (marked C) for which the Committee was indebted to Dr Morrison and which appears to have been drawn up with great care and accuracy; a chart was also delivered to the Committee by Doctor Strachan, and will be found in the appendix (marked D).

There can be no doubt that in addition to the Methodists there are, in the Province, several denominations of Christians who are more numerous than the members of the Church of England. Besides these there are probably many other persons who are not attached to any particular church or form of worship: compared with the whole population, the members of the Church of England must therefore constitute an extremely small proportion. It would be unjust and impolitic to exalt this church, by exclusive and peculiar rights, above

all others of His Majesty's Subjects who are equally loyal, conscientious and deserving. A country in where there is an established church from which a vast majority of the subjects are dissenters, must be in a lamentable state: the Committee hope that this Province will never present such a spectacle. It is well known that there is in the minds of the people generally a strong and settled aversion to any thing like an established Church, and altho from the conviction so happily and justly entertained, that His Majesty's Government will never adopt a measure so deeply affecting the interests and feelings of the inhabitants of this Province, without the most indulgent consideration of their wishes on the subject, there is less anxiety than would otherwise exist, yet the apprehension that it was the intention of His Majesty's Government to incorporate the Church of England or any other church with the Government as an appendage of the state–and to invest it with peculiar rights or privileges civil or pecuniary, from which other sects were excluded, would excite alarm through the Country, and the actual execution of such a measure would produce the most general and lasting discontent. There is besides no necessity for such an establishment. It cannot be necessary for the security of the Government; the loyalty of the people is deep and enthusiastic, and it may be doubted how far it would be improved or increased by any state establishment of clergymen. Religious instruction, it is true, will promote and strengthen loyalty and all other virtues; but no more when communicated by clergymen of the Church of England than by those of other sects, and probably less if they are or appear to be political teachers and servants of the state, rather than ministers of the Gospel. It cannot be necessary for the ends of religion; other denominations of course will not be benefited by it; and the church itself will derive probably but little if any real advantage. The piety and religious prosperity of a church can gain but little from men who are induced by secular motives to assume the sacred functions of the clerical office. In the neighbouring State of New York, as stated by Doctor Strachan to the committee, where all denominations have by law equal rights, the church is in a respectable and flourishing state, Artificial distinctions between men of the same rank, which have no reference to their merits, as loyal, peaceable, obedient subjects, or to their character for morality and conscientiousness, but merely to their religious opinion, are unjust and impolitic. Men may, and do in fact entertain the most conscientious objections either against the particular doctrines or form of worship of any given church, or in general against the civil establishment of any church whatever, and its union with the state; if the church is incorporated with the state they are compelled by the obligations of Conscience to oppose one of the civil institutions of the country, a part of the government itself. It is in fact their duty to do so; but by doing so they become objects of jealousy and suspicion, and in addition to their unjust exclusion from privileges to which they are as much entitled as those who are more fortunate tho' not more conscientious and perhaps not more correct in their opinions upon this subject, their very conscientiousness comes by degrees to be regarded and treated as a crime. Laws are made to guard against any attempts to injure the establishment. To curtail and counteract their influence they are excluded from the honors and offices of the state and subjected to civil disabilities, and thus in effect freedom of conscience is legislated against, and religion, the rules and sanctions of which are of an infinitely

higher nature, is made to rest upon the precepts and penalties of human laws; at the same time the harmony and charity which would otherwise prevail between the members of different sects are disturbed, and sectarian pride and intolerance and animosity take their place.

Upon this Subject His Majesty's Government ought to be, fairly and distinctly apprised of the sentiments and wishes of the people, and as the House of Assembly is the constitutional organ to convey to the throne their sentiments and wishes, the Committee respectfully submit to the house the expediency of addressing His Majesty upon the subject.

The Chart furnished to the Committee by Doctor Strachan, the evidence of the reverend Egerton Ryerson, the evidence of Doctor Morrison and the chart furnished by him and generally the answers of the witnesses to the 13th and 14th questions, will enable the House to judge how far the ecclesiastical chart which accompanied Doctor Strachan's letter to Mr Horton was a fair and accurate representation of the state of the different denominations of Christians in this Province. The expression " occasional service " as explained by Doctor Strachan may be applied almost ad libitum and if used in the same manner by the methodists or other denominations, the places at which they have service may be multiplied almost indefinitely.– It does not appear reasonable to reconcile this explanation with the note to the column in the chart containing the names of the missionaries of the Church of England, which is in those words. " 58 places where there is regular or occasional service, exclusive of frequent journies taken by the missionaries through the new settlements in their neighbourhood," for upon all these journies (if service was performed) it must have been, and doubtless was, stated as occasional service.

In the course of their enquiries the committee obtained information, which to their surprise and regret gave them reason to believe that to create in the minds of the Indians recently converted under the divine blessing to the christian religion, an influence unfavourable to their present religious teachers, through whose exertions this change has taken place, the name of His Majesty's Government had been used, and even that intimation had been made of an intention to compel them to come under the Church of England. The great and surprising change which has occurred within a short period of time in the character and condition of large bodies of the Mississagua Indians is well known; from a state of vice and ignorance, wretchedness and degradation–almost brutal–they have been brought to habits of industry order and temperance, a thirst for instruction and knowledge, a profession of the christian religion, and apparently a cordial and humble belief of its truths and enjoyment of its blessings. In this change the Methodists have been chiefly instrumental. They have manifested the most benevolent zeal in accomplishing it; they have sent missionaries and established schools among them which are supported by voluntary Contributions, and they are still labouring among them with the same disinterested spirit and the same surprising encouragement and success; any attempt to interfere with them or to dictate to the Indians to what Church they should belong, appeared most unwarrantable, but it was chiefly on account of the intolerant spirit which is indicated, and which when circumstances permitted, would lead to a similar interference with the religious freedom of the various denominations among ourselves, not connected with the Church of England, that the

Committee thought it their duty to investigate the subject: they therefore sent for Peter Jones and John Jones, Indians of the Mississagua Tribe, to whom they understood such intentions had been communicated; their evidence will be found in the appendix, but ought to be read in the connexion with the explanation of the circumstances which was afterwards given to the committee by the honorable and venerable Doctor Strachan.

The Committee beg to call the attention of the House to the subject of the monies which have been collected upon the leases of the clergy reserves; these reserves were set apart by the Imperial statute 31st. Geo. 3rd. chap. 31. expressly for the support of a protestant clergy. Altho' different opinions have been entertained as to the policy of such a provision, and also as to the meaning of the expression " Protestant Clergy " yet there could be no doubt that the income accruing from them should be applied in some way to the support of " a Protestant Clergy ", and to that purpose only. The 37th section of the statute, in express terms, declares that this income shall be applied to this purpose and no other whatever; but from Doctor Strachan's evidence it seems that no part of it has ever been so appropriated.– The small amount actually received is also a matter entitled to consideration.

The recent statute, of the Imperial Parliament authorizing a sale of a part of the Clergy reserves,[1] the Committee have not seen and therefore do not know whether it directs the application of the proceeds to any particular purpose. They have been informed that according to this Statute a part of these reserves are to be sold, and the proceeds after deducting the expenses of the sale, are to be paid into the funds of the Imperial Government, and a certain sum to be appropriated, to the improvement of the remainder; assuming that by a proper application it could be obtained for the benefit of this Province it is an interesting question what use shall be made of it. The people generally desire to see it appropriated in a judicious manner to public improvements and to the support of education, upon such principles as will not countenance any distinction on account of religious profession or belief. The House of Assembly, by the bill authorising the sale of these lands and the appropriation of the proceeds to the purposes of education, passed during the last Session, have expressed their opinion against the policy and practicability of devoting it to the purposes originally intended. With the aid of the monies arising from this source the province can undertake many works for internal improvement, by which its prosperity would be greatly promoted, and some of which seem almost indispensable, but which for the want of means, cannot without such aid be attempted. The anxiety of His Majesty's Government to advance our interests, assures us of their assent to all our reasonable wishes on the subject. The Committee are therefore of opinion that an application should be made to have this fund placed at the disposal of the Provincial Legislature, in order that it may be applied to the purposes which have been mentioned. As to the remainder of the clergy reserves, the committee without an examination of the British Statute last alluded to, are unable to say whether the right of directing their sale remains with the Provincial Legislature or is by that statute confined to the British Parliament. In either case they think that measures should be taken to have

[1]See *below p. 386.*

them sold, if possible, and the proceeds applied to the same purposes, as those which they have recommended for the avails of that part of which the sale is already authorized.

Upon the examination of the copy of the charter of the University of King's College, transmitted to the House by His Excellency and referred to them, the Committee find that the following are some of its provisions.

The Bishop of the Diocese is to be a visitor, and as such may disapprove of the bye laws, made for the college by the Council, which thereby become void, unless His Majesty in Privy Council afterwards reverses this order; the Governor, Lieutenant Governor, or person administering the Government is to be Chancellor, the President is to be a Clergyman in holy orders of the Church of England; the Hon. and venerable Doctor Strachan, Archdeacon of York, is to be the first President, the Corporation is to consist of the Chancellor, President, and seven other persons who are to be Members of the Church of England, and to sign the 39 articles of that Church; the Council, under certain restrictions are to make bye laws for the college, one of these restrictions is that no religious test or qualification shall be required of or appointed for any persons admitted or matriculated as scholars in the college, except that those admitted to the degree of Doctor in Divinity shall make the same declarations and subscriptions and take the same oaths as are required of persons admitted to any degree of Divinity in the University of Oxford. The Chancellor, President and Professors of the College, and all persons admitted in the College to the degree of Master of Arts or to any degree in Divinity, Law or Medecine, who from the time of such admission shall pay the annual sum of 20s sterling towards the support of the College, are to be members of the Convocation. From the Message of His Excellency it appears that His Majesty has been pleased to grant as an endowment for the University 225,944 acres of the crown lands, and to appropriate, from the revenues of the Crown, the sum of £1000 sterling per annum for 16 years, for the erection of the buildings, and also that several of the religious societies in England have contributed to the institution by donations of money for the purchase of books and by the foundation of scholarships for Indians to the Indian Tribes.

From the foregoing abstract of some of the provisions of the Charter the sectarian tendency of the institution will be manifest. Doctor Strachan, by whose representations and exertions, in a great measure, the Charter in its present shape, seems to have been procured; in a pamphlet, published in London, entitled " An Appeal to the friends of religion and literature, in behalf of the University of Upper Canada, " distinctly states, that it will be essentially a missionary college," for the education of missionaries of the Church of England. That such must be the natural tendency of putting into the hands of that church, the only seminary of learning in the country, where a liberal education can be obtained, is obvious; but the alarm and jealousy which this very circumstance will produce through the province, and has in some measure already produced and which will prevent parents and guardians from sending their children to it, will perhaps counteract this tendency, although at the same time it will, in an equal degree, limit the benefits which might otherwise be derived from the institution. An University adapted to the character and circumstances of the people, would be the means of inestimable benefits to this prov-

ince. But to be of real service, the principles upon which it is established must be in unison with the general sentiments of the people. It should not be a school of politics or of sectarian views. It should have about it no appearance of a spirit of partiality or exclusion. Its portals should be thrown open to all; and upon none who enter, should any influence be exerted to attach them to a particular creed or church. It should be a source of intellectual and moral light and animation, from which the glorious irradiations of literature and science may descend upon all the equal lustre and power. Such an institution would be a blessing to the country, its pride and glory. Most deeply is it therefore to be lamented, that the principles of the Charter, are calculated to defeat its usefulness and to confine to a favoured few all its advantages. That his Majesty's Government could even have contemplated such a limitation of its beneficence, that they could ever have intended to found it upon such terms as must either preclude from its benefits, the greater part of those for whom it was intended, or subject them at an age ill qualified to guard against such attacks, to the silent but powerful influence of a prevailing spirit and regular system of proselytism, no one will believe. They could not have been aware of the insurmountable objections to which, from the circumstances of the Country, and the sentiments of the people, some of the provisions of the Charter were liable. They acted undoubtedly under the impression, and with the intention of providing in the most gracious and liberal manner, an institution much needed and desired by the people. There is therefore every reason to believe that any representations from the house of assembly upon the matter, will be most favourably regarded. Under this impression the Committee strongly recommend this subject to the consideration of the House. As to the right of the University to elect a member of the House of Assembly, the Committee would remark, that there is no law which gives or (consistently with the Imperial Act 31st Geo. 3rd. Chap. 31 commonly called our constitutional act.) Can give, the right of representation to an university or any other Corporation. By that Act the province was to be divided into Districts, Counties, Circles, Towns, or Townships, for the purpose of electing Members of the House of Assembly which was to be composed and constituted in the manner therein mentioned; that is, among other things, of persons chosen to represent some of these divisions. The qualifications prescribed for Voters in Districts, Circles or Counties differ from those prescribed for Voters in Towns. In the former, each voter must be possessed for his own use and benefit of lands, or tenements in such county &c. held in freehold, fief, roture or by certificate derived under the authority of the Governor and Council of the province of Quebec, of the yearly value of 40 shillings sterling or upwards over and above all rents and charges payable out of or in respect of the same, in the latter each voter must be possessed for his own use or benefit of a dwelling house and lot of ground held in like manner of the yearly value of £5 and upwards, or, having been resident within the said Town or Township for the space of 12 Calendar months next before the date of the writ of summons for the election, must bona fide have paid one years rent for the dwelling house in which he shall have so resided, at the rate of £10 sterling or upwards.

By the provincial Statute 60th Geo. 3rd Chap. 2nd, it is enacted that whenever an University shall be organized and in operation as a seminary of learning in

this Province, and in conformity to the rules and statutes of similar institutions in Great Britain, it shall and may be lawful for the Governor, Lieutenant Governor or person administering the Government, of this Province for the time being to declare by proclamation the tract of land appendant to such university, and whereupon the same is situated, to be a Town or Township– by such name as shall to him seem meet, and that such Town or Township so constituted, shall be represented by one Member,– Provided always nevertheless, that no person shall be permitted to vote at any such election for a member, to represent the said University in parliament, who besides the qualification now by law required, shall not also be entitled to vote in the convocation of the said University.

The right of representation cannot exist until the university is organized, and in operation as a seminary of Learning, and in conformity to the rules and statutes of similar institutions in Great Britain nor until the buildings for the University are actually erected. It then belongs to the Town or Township and not to the University. The Town or Township must be a tract of land both appendant to the University, and that on which it is situated. These expressions exclude all tracts of land separated from the University by lands of other owners, although such separate tracts of land may belong to the University, and all lands which do not belong to the University, The title of it must be vested in the Corporation, if it is corporate property, it cannot be a freehold estate of any individual to qualify him to vote upon it as a town elector. No person can have a free-hold estate in a dwelling house and lot in the town; but the Corporation. That qualification for any person to be a Town elector, cannot exist in the University Town. The right of voting at an election for such Town must be confined to those, [who] besides being entitled to vote in the convocation, shall have resided one year in that Town, and bona fide, paid rent for the dwelling house in which they shall have so resided, at the rate of £10 sterling or upwards.

The right of voting will therefore be confined probably to a very few persons, of whom perhaps the Lieutenant Governor may be one.

With this report, the committee present to the house the draft of an address to His Majesty upon the various subjects which have been mentioned, and may respectfully recommend that it be adopted by the House.

All which is respectfully submitted.

MARSHALL S. BIDWELL,
Chairman.

Committee Room 15th March 1828.

80423—25

CLERGY RESERVES

Imperial Statute—7 & 8 Geo. IV. cap. LXII.[1]

An Act to authorize the Sale of a Part of the Clergy Reserves in the Provinces of *Upper* and *Lower Canada*. [2d *July* 1827.]

'WHEREAS by an Act passed in the Thirty first Year of the
31 G. 3. c. 31. 'Reign of His late Majesty King *George* the Third, intituled *An Act* 'to repeal certain Parts of an Act passed in the Fourteenth Year of 'His Majesty's Reign, intituled 'An Act for making more effectual 'Provision for the Government of the Province of Quebec in North 'America, and to make further Provision for the Government of the 'said Province,' it is amongst other things enacted, that it shall and 'may be lawful for His Majesty, His Heirs, or Successors, to author- 'ize the Governor or Lieutenant Governor of each of the Provinces 'of *Upper Canada* and *Lower Canada* respectively, or the Person 'administering the Government therein, to make, from and out of 'the Lands of the Crown within such Provinces, such Allotment and 'Appropriation of Lands as therein mentioned, for the Support and 'Maintenance of a Protestant Clergy within the same; and it was 'further enacted, that all and every the Rents, Profits, or Emoluments 'which might at any Time arise from such Lands so allotted and 'appropriated as aforesaid, should be applicable solely for the main- 'tenance and Support of a Protestant Clergy, within the Province in 'which the same should be situated, and to no other Purpose what- 'ever: And Whereas in pursuance of the said Act such Allotments 'and Appropriation of Land as aforesaid have from time to time 'been reserved for the Purposes therein mentioned; which Lands are 'known within the said Provinces by the Name of *The Clergy Re-* 'serves: And Whereas the said Clergy Reserves have in great Part 'remained waste and unproductive, from the Want of Capital to be 'employed in the Cultivation thereof; and it is expedient to authorize 'the Sale of certain Parts of such Clergy Reserves, to the Intent that 'the Monies arising from such Sale may be employed in the Im- 'provement of the remaining Part of the said Clergy Reserves, or 'otherwise, for the Purposes for which the said Lands are so reserved 'as aforesaid;' Be it therefore enacted by the King's most Excellent

Governor or Lieutenant Governor, &c. empowered to sell Part of Clergy Reserves in Canada.

Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That it shall and may be lawful for the Governor and Lieutenant Governor, or Officer administering the Government of the said Provinces, or either of them, with the Consent of the Executive Council appointed within such Province for the Affairs thereof, in pursuance of any Instructions which may be issued to such Governor, Lieutenant Governor, or other Officer as aforesaid, by His Majesty, through One of His Principal Secretaries of

[1] *British Statutes at Large, Vol. XI, p. 282.*

State, to sell, alienate, and convey, in Fee Simple, or for any less Estate or Interest, a Part of the said Clergy Reserves in each of the said Provinces (not exceeding in either Province One Fourth of the Reserves within such Province), upon, under, and subject to such Conditions, Provisoes, and Regulations as His Majesty, by any such Instructions as aforesaid, shall be pleased to direct and appoint:

Limiting the Quantity of Land to be sold in One Year.

Provided nevertheless, that the Quantity of the said Clergy Reserves so to be sold as aforesaid in any One Year, in either of the said Provinces, shall not in the whole exceed One Hundred thousand Acres: Provided also, that the Monies to arise by or to be produced from any such Sale or Sales shall be paid over to such Officer or Officers of His Majesty's Revenue within the said Provinces respectively as His Majesty shall be pleased to appoint to receive the same, and shall by such Officer or Officers be invested in the Public Funds of the

Money to be invested in the Funds, and Dividends and Interest applied in Improvement of remaining Part.

United Kingdom of *Great Britain* and *Ireland,* in such Manner and Form as His Majesty shall from time to time be pleased to direct: Provided also, that the Dividends and Interest accruing from such Public Funds, so to be purchased, shall be appropriated, applied, and disposed of for the Improvement of the remaining Part of the said Clergy Reserves, or otherwise, for the Purposes for which the said Lands were so reserved as aforesaid, and for no other Purpose whatsoever; save only so far as it may be necessary to apply the same, or any Part thereof, in or towards defraying the Expences of or attendant upon any such Sale or Sales as aforesaid; and which Appropriations shall be so made in such Manner and Form, and for such special Purposes, as His Majesty from time to time shall approve and direct.

Governor, &c. may grant or accept Lands in exchange for Clergy Reserves.

II. And be it further enacted, That it shall and may be lawful for the Governor, Lieutenant Governor, or Officer administering the Government of the said Provinces, with the Consent of such Executive Council as aforesaid, in pursuance of any Instructions which may in Manner aforesaid be issued to him, to give and grant, in exchange for any Part of the said Clergy Reserves, any Lands of and belonging to His Majesty within the said Provinces of equal Value with such Clergy Reserves so to be taken in exchange, or to accept in exchange for any such Clergy Reserves, from any Person or Persons, any Lands of equal Value; and all Lands so taken in exchange for any such Clergy Reserves shall be holden by His Majesty, His Heirs and Successors, in Trust for the several Purposes to which the said Clergy Reserves are appropriated by the said Act so passed in the Thirty first Year of the Reign of His late Majesty King *George* the Third, or by this present Act.

NAVIGATION LAWS.

Order in Council, 1827.[1]

AT the Court at Windsor, the 16th day of July 1287,

Present,

The King's Most Excellent Majesty in Council.

Whereas by a certain Act of Parliament, passed in the sixth year of the reign of His present Majesty, intituled "An Act to regulate the trade of the "British possessions abroad,"[2] after reciting, that "by the Law of Navigation "foreign ships are permitted to import into any of the British possessions abroad, "from the countries to which they belong, goods, the produce of those countries, "and to export goods from such possessions to be carried to any foreign country "whatever, and that it is expedient that such permission should be subject to "certain conditions," it is enacted, "that the privileges thereby granted to "foreign ships shall be limited to the ships of those countries which, having "colonial possessions, shall grant the like privileges of trading with those "possessions to British ships, or which, not having colonial possessions, shall "place the commerce and navigation of this country, and of its possessions "abroad, upon the footing of the most favoured nation, unless His Majesty, by "His Order in Council, shall in any case deem it expedient to grant the whole "or any of such privileges to the ships of any foreign country, although the "conditions aforesaid shall not in all respects be fulfilled by such foreign "country: "

And whereas by an Order of His Majesty in Council, bearing date the third day of May one thousand eight hundred and twenty-six, after reciting, that within the dominions of His Majesty the King of Prussia, the commerce and navigation of this country, and of its possessions abroad, have been placed upon the footing of the most favoured nation, His Majesty was pleased, by and with the advice of His Privy Council, to declare, that the ships of and belonging to the dominions of His Majesty the King of Prussia were entitled to the privileges so granted as aforesaid by the Law of Navigation, and might import from such the dominions of His Majesty the King of Prussia, into any of the British possessions abroad, goods, the produce of such dominions, and might export goods from such British possessions abroad to be carried to any foreign country whatever:

And whereas by an Order of His Majesty in Council, bearing date the first day of June one thousand eight hundred and twenty-six, after reciting, that the conditions mentioned and referred to in and by the said Act of Parliament, had not in all respects been fulfilled by the Government of France, but that, nevertheless, His Majesty, by and with the advice of His Privy Council, did deem it expedient to grant certain of the privileges aforesaid to the ships of France; His Majesty did therefore, by and with the advice of His Privy Council,

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[1] *G. 63, pp. 462-465.* When Huskisson became Colonial Secretary in 1827, he devoted attention to Colonial Trade. On 8 September, 1827, he wrote a long Circular explanatory of the above Order in Council. For Upper Canada, see *G. 63, pp. 242-276.*

[2] 6 Geo. IV, Cap. 73.

and in pursuance and exercise of the powers and authority in him vested by the said Act of Parliament, declare and grant, that it should and might be lawful for French ships to import into any of the British possessions in the West Indies and America, from the dominions of His Most Christian Majesty, such goods, being the produce of those dominions, as were mentioned and enumerated in the table subjoined to the said Order, and to export goods from such British possessions to be carried to any foreign country whatever; and the table referred to in the said Order was as follows, that is to say; wheat, flour, biscuit, bread, meal, peas, beans, rye, callavances, oats, barley, Indian corn, rice, shingles, red oak staves or headings, white oak staves or headings, wood, lumber, wood hoops, live stock, hay and straw, coin and bullion, diamonds, salt, fruit and vegetables fresh, cotton wool, and all articles subject on importation to a duty *ad valorem,* on which articles the amount of such duty should not at the time of importation exceed seven pounds ten shillings for every hundred pounds of the value of the same.

And whereas by an Order in Council, bearing date the sixteenth of December one thousand eight hundred and twenty-six, after reciting the said last-mentioned Order of the first day of June one thousand eight hundred and twenty-six, His Majesty, by and with the advice aforesaid, and in pursuance and exercise of the powers and authority in him vested by the said Act, did declare and grant, that it should be lawful for French ships to import into the island of Mauritius, from the dominions of His Most Christian Majesty, such goods, being the produce of those dominions, as are mentioned and enumerated in the table subjoined to the said Order in Council of the first day of June one thousand eight hundred and twenty-six, and for the prevention of any doubts respecting the true meaning and effect of the said Order in Council of the first day of June one thousand eight hundred and twenty-six, and of the said Order of the sixteenth day of December one thousand eight hundred and twenty-six, His Majesty was further pleased to order and declare, that neither the said Order in Council of the first day of June one thousand eight hundred and twenty-six, nor the said Order of the sixteenth day of December one thousand eight hundred and twenty-six, should extend, or be construed to extend, to authorize the importation by French ships into any of the British possessions in the West Indies and America, or into the island of Mauritius, from the dominions of His Most Christian Majesty, of any wine, being the produce of those dominions:

And whereas by an Order in Council, bearing date the twenty-seventh day of July one thousand eight hundred and twenty-six, after reciting, that the conditions mentioned and referred to in the said Act of Parliament had not in all respects been fulfilled by the Government of the United States of America, and that, therefore, the privileges so granted as aforesaid by the Law of Navigation to foreign ships could not lawfully be exercised or enjoyed by the ships of the United States aforesaid, unless His Majesty, by His Order in Council, should grant the whole or any of such privileges to the ships of the United States aforesaid, and that His Majesty did deem it expedient to grant to the ships of the said United States such of the said privileges as were thereinafter mentioned, His Majesty did, with the advice of His Privy Council, and in pursuance and exercise

of the powers and authorities in him vested by the said Act of Parliament, declare and grant, that it was and should be lawful for the ships of the United States aforesaid to import into any of the British possessions abroad, from the said United States, goods, the produce of the United States aforesaid, and not enumerated in the table of prohibitions and restrictions in the said Act contained, and to export goods from such British possessions abroad to be carried to any foreign country whatever; provided always, that such goods so imported should be subject and liable to the payment of the duties imposed and made payable under and by virtue of the said Act of Parliament; provided also, and His Majesty did further, with the advice aforesaid, declare, that the privileges so granted as aforesaid to the ships of the said United States, so far as respected the British possessions in the West Indies and on the Continent of South America, and so far as respected the Bahama Islands and the Bermuda or Somer Islands, and so far as respected His Majesty's settlements in the island of Newfoundland and the several islands belonging to and dependent on those settlements, should absolutely cease and determine upon and from the first day of December in the year one thousand eight hundred and twenty-six; and it was further provided, and His Majesty did further, with the advice aforesaid, declare, that the privileges so granted as aforesaid to the ships of the United States, so far as respected the British possessions on the Western Coast of Africa, should absolutely cease and determine upon and from the said first day of December one thousand eight hundred and twenty-six; and it was further provided, and His Majesty, with the advice aforesaid, did further declare, that the privileges so granted as aforesaid to the ships of the said United States, so far as respected the colony of the Cape of Good Hope and the islands, settlements, and territories belonging thereto and dependent thereupon, and so far as respected the islands of Mauritius and the several islands and territories belonging thereto or dependent thereupon, and so far as respected the island of Ceylon and the several islands and territories belonging thereto and dependent thereupon, should absolutely cease and determine upon and from the first day of March in the year one thousand eight hundred and twenty-seven; and it was further provided, and His Majesty did, with the advice aforesaid, declare, that the privileges so granted as aforesaid to the ships of the said United States, so far as respected His Majesty's settlements in the island of New Holland and the several islands and territories belonging thereto and dependent thereupon, and so far as respected the island of Van Dieman's Land and the several islands and territories belonging thereto and dependent thereupon, should absolutely cease and determine upon and from the first day of May one thousand eight hundred and twenty-seven; and it was thereby provided, that nothing therein contained should extend, or should be construed to extend, to infringe or interfere with the Convention of Commerce and Navigation concluded between His late Majesty King George the Third and the United States of America, bearing date the third day of July one thousand eight hundred and fifteen, or the further Convention of Commerce and Navigation concluded between His said late Majesty and the United States of America, bearing date the twentieth day of October one thousand eight hundred and eighteen; or to prevent ships of the said United States from importing into

any of the British possessions in Europe, or from exporting from such British possessions in Europe, any goods which under or by virtue of the said Convention, or either of them, or of the several Acts of Parliament made for carrying such Conventions into effect, could or might be lawfully imported into or exported from such British possessions:

And whereas by an Act, passed in the seventh and eighth years of His present Majesty's reign, intituled "An Act to amend the laws relating to the Customs,"[1] after reciting or taking notice of the said Act so passed as aforesaid in the sixth year of His Majesty's reign, and after reciting that unless some period were limited for the fulfilment by foreign countries of the conditions mentioned and referred to in the said recited Act, the trade and navigation of the United Kingdom and of the British possessions abroad, could not be regulated by fixed and certain rules, but would continue subject to changes dependent upon the laws from time to time made in such foreign countries; it is therefore enacted, that no foreign country shall hereafter be deemed to have fulfilled the conditions so prescribed as aforesaid in and by said Act, as to be entitled to the privileges therein mentioned, unless such foreign country had in all respects fulfilled those conditions within twelve months next after the passing of the said Act, that is to say, on or before the fifth day of July one thousand eight hundred and twenty-six; and for the better ascertaining what particular foreign countries are permitted by law to exercise and enjoy the said privileges, it is further enacted, that no foreign country shall hereafter be deemed to have fulfilled the beforementioned conditions, or to be entitled to the privileges aforesaid, unless and until His Majesty shall by some Order or Orders to be by him made, by the advice of His Privy Council, have declared that such foreign country hath so fulfilled the said conditions, and is entitled to the said privileges; provided always, and it is thereby declared and enacted, that nothing therein contained, extends, or shall be construed to extend to make void or annul any Order or Orders in Council theretofore issued, under the authority or in the pursuance of the said recited Act, or to take away or abridge the powers vested in His Majesty in and by the said Act, or any of those powers, any thing therein contained to the contrary in anywise notwithstanding:

And whereas it is expedient that, in pursuance of the powers vested in His Majesty in and by the said recited Acts of Parliament, His Majesty should declare what Foreign Powers have fulfilled the before mentioned conditions, and are entitled to the privileges aforesaid, His Majesty therefore, in pursuance and exercise of the powers vested in him in and by the said Acts of Parliament, by and with the advise [sic] of His Privy Council, is pleased to order and declare that the several Orders in Council, bearing date respectively the third day of May one thousand eight hundred and twenty-six, the first day of June one thousand eight hundred and twenty-six, the sixteenth day of December one thousand eight hundred and twenty-six, and the twenty-seventh day of July one thousand eight hundred and twenty-six, hereinbefore respectively recited, shall be, and the same are hereby, confirmed and continued in full force and effect: and His Majesty doth further, in pursuance and exercise of the powers

[1] 7 and 8 Geo. IV, Cap. 56.

aforesaid, and with the advice aforesaid, declare and grant that it shall be lawful for French ships to import into the British possessions on the western coast of Africa, and into the colony of the Cape of Good Hope, and into the island of Ceylon, and into His Majesty's settlements in the island of New Holland, and into the island of Van Dieman's Land, and into the several islands and territories dependent upon and belonging to the several settlements or colonies aforesaid, from the dominions of His Most Christian Majesty, such goods being the produce of those dominions, as are mentioned and enumerated or referred to in the table subjoined to the said Order in Council of the first day of June one thousand eight hundred and twenty-six. And in further pursuance of the powers vested in His Majesty, in and by the said Acts of Parliament so passed as aforesaid in the seventh and eighth years of His Majesty's reign, His Majesty, with the advice aforesaid, is further pleased to declare that the conditions mentioned and prescribed in and by the said Act so passed as aforesaid in the sixth year of His Majesty's reign, have in all respects been fulfilled by the Government of His Majesty as King of Hanover, and by the Government of His Majesty the King of Sweden and Norway, and by the Government of His Serene Highness the Duke of Oldenburgh, and by the Free Hanseatic Republics of Lubeck, Bremen, and Hamburg, and by the State of Colombia, and by the United Provinces of Rio de la Plata, and by the United States of Mexico: and His Majesty is further pleased to declare that the ships of and belonging to the dominions of His Majesty as King of Hanover, or of His Majesty the King of Sweden and Norway, or of His Serene Highness the Duke of Oldenburgh, or of the Free Hanseatic Republics of Lubeck, Bremen, and Hamburgh, or of the State of Colombia, or of the United Provinces of Rio de la Plata, of the United States of Mexico, are entitled to the privileges so granted as aforesaid by the Law of Navigation, and may respectively import from such the dominions to which they respectively belong into the British possessions abroad, goods, the produce of such dominions respectively, and may export goods from the British possessions abroad, to be carried into any foreign country whatever:

And whereas His Majesty, by and with the advice of His Privy Council, doth deem it expedient to grant the privileges aforesaid to the ships of the dominions of His Majesty the Emperor of All the Russias; His Majesty doth therefore, by the advice aforesaid, and in pursuance and exercise of the powers and authority in him vested by the said last recited Act of Parliament, declare and grant that it shall and may be lawful for Russian ships to import into any of the British possessions abroad, from the dominions of His Majesty the Emperor of All the Russias, goods, the produce of those dominions, and to export from such possessions, to be carried to any foreign country whatever; and His Majesty, by the advice aforesaid, is further pleased to declare and grant that it shall and may be lawful for ships of or belonging to any kingdom or state within the limits of the East India Company's charter, to import from the dominions to which they respectively belong, goods, the produce of such dominions, into the colony of the Cape of Good Hope, and into the island of Ceylon, and into the island of Mauritius, and into His Majesty's settlements in the island of New Holland, and in the island of Van Dieman's Land, and into the several islands and territories

dependent upon and belonging to the several settlements or colonies aforesaid, and to export goods from such several settlements or colonies, or their respective dependencies, to be carried into any foreign country whatever; provided always that nothing herein contained shall extend, or be construed to extend, to take away or abridge any power now vested in His Majesty's subjects in the last mentioned settlements or colonies, of trading with any kingdom or state, within the limits of the said Company's charter, and in further pursuance of the said Act of Parliament, His Majesty, by the advice aforesaid, doth declare that no foreign country is entitled to the privileges so granted as aforesaid by the Law of Navigation, other than and except the foreign countries hereinbefore particularly mentioned; and that no foreign ships can or may lawfully import into or export from any of the British possessions abroad, any goods, except so far as the right of such foreign countries to which such ships may belong is hereinbefore declared; provided always, that nothing herein contained, extends, or shall be construed to extend, to infringe or interfere with any Treaty or Convention subsisting between His Majesty and any Foreign State or Power; provided also, and it is further ordered and declared, that nothing herein, or in the said former Orders in Council, or any of them contained, extends, or shall be construed to extend, to His Majesty's garrison and territory at Gibraltar, or to the island of Malta, but that goods shall and may be imported into and exported from Gibraltar and Malta, in the same manner in all respects as though this present Order, or the said former Orders, had not been made:

And the Right Honourable the Lords Commissioners of His Majesty's Treasury, and the Right Honourable Viscount Goderich, one of His Majesty's Principal Secretaries of State, are to give the necessary direction herein, as to them may respectively appertain.

JAS. BULLER.

CIVIL GOVERNMENT OF LOWER CANADA.

EXTRACT OF A REPORT OF A COMMITTEE OF THE WHOLE COUNCIL—

16th. APRIL 1827.[1]

"The Committee have not failed to give a deep consideration to the Subject on which their advice [sc] is asked as to the course to be pursued by Your Lordship this Summer in respect to the Salaries and, necessary expences of the Civil Government set out in the Statement marked E– laid before them, and for which no appropriation has been made by the Legislature; and though the Board feel a strong inclination to maintain the just and equitable Claims of all His Majesty's Servants to the stipulated recompense for their Services, and are perfectly aware that Your Excellency by withholding the payment thereof, from this Class of useful public Servants, will occasion a great individual and general distress, they are constrained from a sense of Duty to adhere to the Report

[1] *Lower Canada, State Book K, pp. 225-226.*

approved of by Your Excellency in Council on the 14th June 1826[1]; they can not therefore recommend the payment of any Salary or Contingent Expense not included in the Warrants Marked A.B. and C. transmitted by the Lords Commissioners of His Majesty's Treasury appropriating for the present year, the several Branches of the Provincial Revenue, which are placed by the permanent Laws at the disposal of the Crown."–

DALHOUSIE TO BATHURST.[2]

No. 15.–

Civil Government

QUEBEC, 20th. April 1827.

MY LORD

I did myself the honour to report to Your Lordship on the 7th. March that I had closed the Session of the Provincial Parliament; I now beg leave to add a more circumstatial detail of the Proceedings.

When I recall to Your Lordship's recollection the dispatch of Sir Francis Burton of 24th. March 1825, the resolutions adopted in this Session will shew how much Sir Francis Burton was misled as to the intentions of the House of Assembly.– Your Lordship's dispatch of 4th. June 1825 and the Speech on closing the Session in March 1826 brought to light the real sentiments of that House:– It is now declared by them, that no grant shall be made to His Majesty, while pretentions are insisted upon by the Government to the appropriation of any part of the Annual Revenue, without the previous vote of that House;– and that the whole must be placed at the disposal of the Assembly.

In bringing forward the various matters of public business, I have endeavoured to follow closely the Instructions contained in Your Lordship's dispatch of 24th– October last;– these were most acceptable to me, under the difficulties in which I have been acting in this contest with the House of Assembly:– In opening the Session, I avoided any allusion to the question in dispute, and required only that sum in aid, which has been stated in the Schedule D. accompanying the Treasury Warrants[3] for the Appropriation of the Permanent Revenue of the Crown; together with a further supply of less than £6000 for certain parts of the ordinary expenditure of the year, which were not provided for.

I brought all other services before the House by Estimates and Messages separately, in order that each might stand on it's own merits, not dependent on a general appropriation Bill as has been the custom heretofore;– I made it known that every information would be given with respect to the application of the permanent or appropriated Revenue, if the House thought proper to call for it, but that it would not be communicated unless asked for.

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[1]This report stated "That they cannot recommend that any Warrant should issue for any Salary or Contingent Charge not included in the permanent Estimate and for which no appropriation has been made by the Provincial Legislature unless His Majesty having taken into his royal consideration the embarrassed and Critical Circumstances in which the Province has been placed by the reiterated Refusals of the Assembly to provide for the payment of the said Salaries and Contingent Charges should be graciously pleased to point out some Fund at the disposal of the Crown from which they may lawfully be discharged." *Lower Canada, State Book, K., pp. 152-153.*

[2]*Q. 179, pp. 83-100.*

[3]See *above p. 322.*

I regret to say, that the Assembly has not shewn, in this Session, any disposition to meet the question, or the other branches of the Legislature, with reason or conciliatory feeling:

No inquiry whatever was made as to the Treasury Warrants for the application of the Crown Revenue, although the House was aware of their existence.

The Messages with various other items of necessary expence were all referred to the Committee on the Estimates and Accounts;– and such sums as were recommended, by Special Committees, to be granted, were lost by the Resolutions finally adopted on bringing up the Report of the Committee on the accounts.

Many extraordinary circumstances occurred to shew the temper of the leaders of the Assembly;– but I will notice two only:– A Message on the subject of Schools recommended an appropriation, for this year, of £3000 to be divided equally among the Protestant and Catholic Schools under the Royal Institution;– The sum was approved in Committee; but another measure was in the mean time introduced and concurred in by the House although not framed into a Bill, granting a sum of £10.000 for education, which had not been recommended, and of the object and intention of which I am yet ignorant.

Another Message recommended various small sums for the improvement of Roads, and particularly £1000 to explore the new line of communication to New Brunswick and Nova Scotia, from Metis on the S^{t}. Laurence by Ristigouche [sic];– these Sums were also approved in Committee; but another measure was introduced and concurred, for granting £12.000 to projected roads which had never been recommended and which I had never heard named.

I cannot say that these measures were brought forward in mockery; but it was evident that they had one purpose in view, that of shewing a spirit of liberality in the Assembly, while the odium of rejecting such grants would fall either upon the Council, or upon His Majesty's Government:

From these circumstances I had no hesitation in declaring that constitutional principles and the common usages of Parliament had been disregarded by the Assembly:

The Measures recommended by His Majesty's Government for the good of the Province were either left unnoticed, or postponed, while a multitude of trifling Bills, amounting to more than seventy, many of them repeatedly introduced before, and rejected,– were brought forward, merely to consume time and make a shew of industry and public spirit.

It was clearly understood from the beginning of the Session that the Executive Government would follow the same course as in the year before, refusing all money Bills for local purposes if the aid required for the service of Government was still refused by the Assembly:– In all cases of applications made to me to sanction private Bills which contained grants of public money I invariably informed the parties that the grant could only be allowed when the supply required for the Public Service was passed; And the Legislative Council acting on the same principle, stopped all Money Bills of this description, and indeed all that contained appropriations for special purposes.–

I must here explain why I deviated from that course in assenting to the Bill granting £25.000 for the Welland Canal; as it may appear to Your Lordship that this was inconsistent with the rule I had laid down for other cases, and that it was also too large a Sum to be disposed of so readily.– When I received Sir Peregrine Maitland's dispatch on this subject by a gentleman specially sent with it, I lost no time in recommending it to the favourable consideration of both Houses;– I had little hope that any greater attention would be given to it in the Assembly, than to the recommendations on other matters, but it was immediately taken up warmly, and passed rapidly;– I felt that I ought not to allow our Provincial disputes to be interposed in what so deeply interested our Sister Province, and I also rejoiced to see a first instance of that mutual support by which the Canadas will stand or fall hereafter: I therefore gave the Royal assent to the Bill and I sincerely hope Your Lordship will approve my having done so.

The determination of the Assembly, in adopting Resolutions to refuse the supply, left me no alternative but to follow Your Lordship's Orders of 31st. August which I considered applicable to such a case; and I accordingly prorogued the Legislature on the following Day.

Having thus detailed the principal features of the Session, it is necessary to consider what is to follow upon these unpleasant circumstances:– An immediate dissolution is obviously the first consequence of the resolution of the Assembly not to grant a supply while the Government maintains its pretensions to the application of the permanent Revenue; And I am happy to say that on submitting the matter to the Executive Council every member except one entirely concurred in the necessity of the measure. This Parliament will therefore be dissolved in May; so that the Agricultural labours of the Country will not be interrupted by the elections; And I shall call the new Parliament for the dispatch of business in October so that Your Lordship may be informed of the further proceedings on the question in dispute early in Next Winter.

The calling of a new Parliament affords an opportunity to impress the Public mind with clearer and juster views of the chief question at issue than have as yet prevailed in the Representative body, acting under the influence of violent party feeling;– And here I beg Your Lordship's notice of the inclosed paper of "considerations" on the present state of the discussions with the Assembly: It is drawn with much temper and good sense, and with a more intimate knowledge of the leading members, personally, than I possess:– I cannot say that I have any great hope of finding in the new Parliament a disposition to meet, the views which it suggests; but I most willingly agree in offering every chance to recall the House of Assembly to reason and moderation.

I would adhere in every point to the Spirit and letter of Your Lordship's instructions of 24th. October last; with one deviation which I submit with the utmost deference to your Judgment: Convinced that the same silence will continue to be observed in the Assembly in regard to the Treasury Warrants for the application of the permanent Revenue, I beg permission to speak more plainly and urge the question to a further decision by bringing this point distinctly before them; I beg authority to say in opening the next Session "that I am commanded to inform the Assembly that in conformity with the Act of 14th.

Geo. III c. 88. warrants have been issued to apply the Revenue raised under that act & by it placed at the disposal of the Crown; and that His Majesty has been pleased to issue his Royal Warrants for applying his territorial Revenue and the aid of £5000 granted permanently to the Crown by the Provincial Act of 35th– Geo: III.– [1] That these Warrants will be laid before the House if desired; and that the supply now to be required, is that amount in which those Revenues fall short of the expenditure necessary for the administration of the Government."

I would urge the matter to an issue in this manner, being convinced that a decided tone on the part of Government is now the only course by which the Canadian Members of the Assembly will be made to think for themselves individually:– There are in that House many men of respectable character who have submitted to be led blindfold, but who may hereafter consider their votes more seriously when the question is put plainly before them in this Shape by the King's Command.

It remains for me yet to state the course I mean to pursue in this Summer in paying those Salaries and expences which are left unprovided for: These are contained in the Schedule D—accompanying the Treasury & Royal Warrants (but not included in them;) amounting to £6,462:– and in the inclosed Schedule E, for Provincial Salaries and Services; but which are equally Just and necessary as the former: Public improvements may stand still, but means must be provided for services required by law. As in former years I have referred the matter for the advice of the Executive Council and have received the same report as last year, a copy of which I enclose: (Not enclosed.) I readily concur in the opinion they have expressed although by it I am obliged to act as last year on my own responsibility as Governour;– that is, to pay all just Salaries and necessary expences by Warrants hereafter to be accounted for, if objected to by the Assembly;–

A separate account of these will be kept and submitted for the earliest consideration of the Assembly in the next Session: This course can only be justified by necessity, in the circumstances in which we are placed; But I am in some degree further borne out in adopting it as no objection has been raised by the Committee of the Assembly to the payments made by me in like manner last summer which I brought specially before that body by Message early in the Session.

The amount to be so advanced will however be less than last year, as far as regards the expences of the Legislature, as the two Houses have in this Session presented addresses for their contingencies, engaging to make good the advances in a constitutional manner; and the Legislative Council have included in their address the Salaries of their Speaker and officers.

I transmit herewith statements shewing the means and the expenditure, estimated for this year 1827:– I am happy to say that the permanent appropriated Revenue will in all probability come within £4000 of the expenditure chargeable upon it (including therein the unprovided Schedule D.) and that the unappropriated Revenue will be abundant to meet all Demands upon it including the large donation to the Welland Canal;– I shall therefore have no occasion,

[1] Cap. 9.

this year, to draw any money from the Military Chest in aid of the Civil Government, except the usual payments for Ecclesiastical Salaries:

I need scarcely say, My Lord, that I still deeply feel the difficult situation in which I am placed here;– but I do not shrink from a straight forward discharge of the duties belonging to it, conscious that my intentions are right and that I am acting for the best;– And trusting confidently in Your Lordship's support and ultimate approbation.

I have the honour to be
My Lord
Your Lordship's
Most obedient humble servant

DALHOUSIE

The Right Honourable
The Earl Bathurst K.B.

Considerations

On the Expediency of again proposing to the Assembly of Lower Canada to grant a Civil List for the King's life, or for some definite period.–

The discussions which have been so long pending in the Colonial Legislature respecting the mode of providing for the Civil Expenditure of the Government, have now reached a point, and assumed a Character, which must occasion Concern and alarm to every person who wishes well to the Peace and prosperity of the Province.–

The Assembly, still maintaining their pretensions to the exclusive controul and disposal of the *whole* Revenues raised within the Province, have refused in two Successive Sessions to grant the necessary Supplies for the Support of the Civil Government, in aid of the Revenues at the disposal of the Crown; and they declare their intention to persist in such refusal until their pretensions are admitted: His Majesty's Government on the other hand, feeling that such demands cannot be admitted without virtually unhinging the whole frame of Government, have manifested their determination not to abandon the right of the Crown to the Exclusive disposal of the Revenues denominated the Permanent Revenues;– And while those Revenues remain, (as they now are,) deficient by several thousand pounds for the ordinary and necessary annual expenditure of the Government, it is evident that these conflicting pretensions must continue to be an unfailing Source of discord and Embarrassment.

In this state of things, it is the inquiry of every moderate and reflecting Man, whether some expedient of accommodation cannot be adopted:

Lord Bathurst's dispatches of Sept[r]. *1820* & 1821, point to such a course in the event of a permanent grant of a Civil list being refused; It is now the only course to be pursued to save the Province from a long and fruitless Contention;– And it is to be hoped there is still sufficient good sense left among the people of the Country, to justify the expectation that any reasonable offer of accommodation would Succeed.

It can indeed be shewn that every attempt has been made already, that could be made, to effect this desirable object.

But circumstances are materially changed,– (so far as respects the probable chances which the Assembly had of succeeding, in the utmost extent of their pretensions,) since the propositions for a permanent Civil List, and for a grant for the King's life, were successively made to them in 1821 & 1822.–

What those changes have been it is not necessary to detail: But the following general considerations tend to shew that the Assembly might probably be more disposed now to entertain the question of a Civil list for the King's life, (or for any definite period,) than they were in 1822, when that offer was first made to them:

1st– In the Year preceding they had been called upon to make a permanent Grant for the Civil list and had refused it; And when, in 1822, they rejected a grant for the King's life they considered the proposal of it as the first step of Concession on the part of Government, and hoped that their rejection and further perseverance would bring Government to their own terms,– namely an annual grant of the whole expenditure, by items.

2– It is said that the proposal made to them in 1822, for a grant for the King's life, not having explicitly declared that if such a grant were made the Permanent Revenue would (for such period) be surrendered to the Province;– there may have been some room left for misunderstanding on this point, or at least that a more distinct declaration of it at the present moment, (whether it was or was not *then* well understood,) would give an opportunity to those who formerly opposed the measure but might now be inclined to support it, to do so without incurring the Charge of inconsistency:–

It is necessary however on this part of the subject to admit, that in the Session of *1822,* when the proposal of a Civil List for the King's life was made to the Assembly,– the Estimates distinctly shewed that the Revenues at the disposal of the Crown were submitted to them as a part of the "*Ways and Means*" of providing for such Civil list; and the resolutions which they adopted, and the address to His Majesty which they founded thereon, sufficiently proved that they understood the proposition in this sense, and rejected it on other grounds.–

3d– The Assembly have since that period (Viz: in 1823) abandoned their pretension of appropriating for the whole Civil List annually and by items;– although it is true that in that year they protested by their resolutions against the form of the estimates which in fact withdrew from their vote so much of the annual expenditure as could be provided for from the Revenues at the disposal of the Crown,– and it is also true that by the Bill proposed by them in 1824, and by their proceedings on the Act sanctioned in 1825, they virtually and in effect persisted in, and (in the latter case) made good, those pretensions.–

4– But the principal Circumstance in which the dispute with the Assembly is altered since 1822, (and the chances of success in reviving a proposition for a Civil list for the King's life increased,) is that His Majesty's Government in England has now interfered and assumed the exercise of those powers which by Law undoubtedly belong to it, by refusing in the first place the Bill passed in

1825, which appeared to compromise the rights of the Crown over its proper revenue, and by Subsequently directing the application of that Revenue in a legal and Constitutional manner:–

From these acts the Assembly may infer the determination of His Majesty's Government not to concede that point which they wish to gain, either in the shape of a Bill of Supply for the *whole* expenditure *by items;* or by a Bill founded *on Votes in the House by items:*

5– The approaching dissolution of the Assembly affords another hope of Success in renewing such an offer:–

There are at the present moment many Men in the House (even of those who vote against Government,) who, it is believed, would gladly seize any favorable plea for quitting the party with which they act, if they could do so on plausible grounds:– or, (above all other Considerations) if they saw a chance of being in a majority in so changing sides. One, even of the leading men, who brought forward and supported the refusal of a Civil List for the King's life in 1822, has declared in debate that he now views such a measure as desirable for removing existing difficulties:–

To this it may be added that the election of a New Assembly would in the first place afford a new point of departure for future proceedings;– and that it may perhaps bring some accession of strength to the Government side of the House;

It cannot be supposed that the present minority voting for the Government, (amounting only to 8 or 9 Members,) can be so increased as to form a Majority consisting of decided Government Members:

But by the use of that influence, direct and indirect, which the Crown undoubtedly possesses in the Province, both by its Siegniorial possessions, and by Offices and Patronage, it is highly probable, that, if those means are put into active operation, several new Members might be brought into the House, and those who vote with Government would form a *nucleus* to which the Country Members before alluded to would with less apprehension attach themselves upon the main question at issue:–

It will necessarily be asked what advantage this arrangement, (even if accepted by the Assembly,) would give to his Majesty's Government, to counterbalance the disadvantages apparent on the face of it:

For it is evident that it would be a temporary Surrender of a *permanent,* and *growing* revenue,– (so far as regards the 14th of the King,) for a provision of *limited duration* and *fixed amount:* But on the other hand the Crown would, at the end of the limited period, revert to the possession of all its rights over that Revenue with it's intermediate increase;– And above all, this *advantage would result,* (an advantage of which it is impossible to calculate the value or the extent;) that harmony would be restored to the legislature of the Province; that a disputed question of Constitutional right between the Colony, and the Government both of the Province and the Mother Country, (for it is in vain to treat it as a mere Colonial Struggle,) would be adjusted; a question in which there is not now any rational hope that the parties will ever, on any other terms, agree and which may estrange the feelings of the people of the Colony;

and that this, the sole obstacle to the rapid improvement of the Province,– being removed, it would advance in a Career of prosperity proportioned to its great resources and population,– And exceeding that of any other of the North American Colonies;–

Should it be determined by His Majesty's Government, that this proposal shall again be made to the Assembly,– the next subject for consideration will be the form of making it. As it should either distinctly express, or would clearly imply, that the Revenues of the 14th– of the King and the other permanent appropriated revenues should be surrendered to the Assembly, as a part of the Ways and Means for the proposed grant for the King's life,– it would evidently be necessary that the Clause of the 14th– of the King, which leaves the appropriation of that fund to the Lords of the Treasury should be suspended for and during the period of Such grant of a Civil List: Such suspension could only be effected by an Act of the Imperial Parliament; and it would be necessary to inform the Provincial Legislature, either that such an Act *had* passed,– Conditionally on their making such a grant;– or (as was done by Lord Dorchester,)[1] that His Majesty's Ministers *would recommend* the measure to Parliament when that condition was fulfilled:–

But it would in every point of view be most advisable, (and would indeed in all probability Ensure the acquiescence of the Provincial Assembly in the offer,) if it were accompanied by the information that such an act *had actually passed*,– to take effect when and so soon as the Legislature of Lower Canada should make a grant to His Majesty, for His Majesty's Reign, (if the same shall continue for ——— Years, or otherwise for the said period of ———Years,) of a Sum equal to the Revenue of the 14th, of the King, (upon an average of three years preceding) to be applied by warrant of the Governor of the Province in payment of the expenses of the Civil Government of the Province and of the administration of Justice therein; and that when such grant shall be made and assented to by His Majesty, Such Suspension should be Notified in the Province by Proclamation in His Majesty's name and under the Great Seal of the Province.–

[1] In laying the financial statement before the House of Assembly of Lower Canada, on 29 April, 1794, Lord Dorchester said, in part: "the duties payable to His Majesty under the Act of the 14th year of his Reign, Chap. 88, on articles imported into the Province of *Quebec*, and on Licences granted to persons for retailing spirituous liquors. As soon as the Provinces of *Upper Canada* and *Lower Canada* shall have passed Laws laying the same or other duties to an equal amount, to those which are payable under this Act, and such Laws shall have obtained the Royal Assent, the King's Ministers will be ready to propose to Parliament a repeal of the Act above mentioned." *Journals of Assembly, 1793-1794, p. 232.* For an Act of this nature see *above p. 166.*

GODERICH TO DALHOUSIE.[1]

DOWNING STREET

31 July 1827

N° 10

MY LORD,

Your dispatches of the 7th March and the 20th of April last, have been received and laid before The King. You acted perfectly right in giving your consent to the Welland Canal Bill; and the Prorogation of the Parliament was rendered indispensably necessary by the manifest hopelessness of any attempt on Your Excellency's part to induce them to carry through the Public business of the Colony;

I cannot but hope however that upon the re-assembling of the Legislature its Members may be induced to take a more reasonable and moderate view of the points which have so long been in discussion between the Executive and Legislative Authorities, and which if left unsettled would end in throwing every thing into confusion. I entirely concur in what has been repeatedly stated in my Predecessor's correspondence with you, that it is impossible to admit the pretension set up by the Legislative Assembly of controlling by their Annual Votes, the disposition of those Revenues which the Crown enjoys independent of their authority. It may indeed be competent to either House of the Legislature to Address the Crown either directly or through His Majesty's Representative in the Colony, against any specific appropriation of those Revenues, to which upon Public grounds they may object; and on the other hand, the Crown may if it thinks proper acquiesce in any Bill presented by the two Houses for limiting or regulating such an appropriation; but it cannot admit the claim of right which is brought forward by the House of Assembly of Lower Canada.

In the present state of things however, it is obvious that the greatest mischief may result from the want of a good understanding upon this Subject, and it is of the utmost importance to devise some mode of Settling this question, without compromise of principle or of dignity. The practice of this Country appears to furnish an analogy and a precedent which may be usefully applied to the case of Lower Canada.

The Civil List of the United Kingdom is granted to the Crown for the life of The King in lieu of His Hereditary Revenues, and the Act which grants it, 1st Geo 4 Cap[2] divides into various classes the expenditure to be charged upon it, assigning a specific Sum to each, but authorising the application at the end of each Year of the saving upon any one class to the excess upon any other. The Civil List being thus Settled upon a fair principle of compromise, it appears to me that

[1] *G. 16, pp. 168-179.*
[2] 1 Geo. IV, Cap. 1.

an arrangement upon this principle might be adopted with great advantage in Lower Canada.

The Assembly might be informed that it is His Majesty's desire to prevent any source of disunion upon this Subject; and that His Majesty's Government is ready to propose to the Imperial Parliament to take steps (if any such should be found necessary) for placing at the disposal of the Assembly of Lower Canada all those Revenues which are now raised in the Province by virtue of any British Acts of Parliament and of which the Appropriation is not now under the controul of the Colonial Legislature.

These Revenues would include all Customs duties imposed prior to 1791 whether remitted to England as is the case with some, or appropriated in the Province by the Governor under Treasury Warrants, as is the case with the larger proportion. There might also be included in the items proposed to be placed at the disposal of the Legislature whatever duties are now levied by way of Licences as well as a Sum to be hereafter Settled on account of that portion of the Post Office Revenues which upon a fair consideration may be assumed to be the Annual average Surplus of the internal Postage of Lower Canada above the expences of management and which is now remitted to England.

The total Amount of these different items may be estimated as follows

Duties levied under the 14 Geo. 3d Cap. 88.....	21,750
Licences	3,000
Fines and Forfeitures.....	700
Permanent appropriation of 35th Geo. 3d– Provincial.....	5,000
Customs Duties remitted to England.....	1,040
Surplus Postage remitted to England.....	2,200
	33,690

But it would not be unreasonable to assume that the increasing prosperity of the Colony, the developement of whose resources is a constant subject of His Majesty's solicitude, would tend rapidly to augment the produce of these duties, which without any oversanguine view, might be presumed (independent of the permanent appropriation of £5,000) to average for the next ten Years not less and probably more than thirty one Thousand Pounds Per Annum; if therefore an arrangement were to be made whereby a fixed Sum should be granted for the Civil List of the Colony for ten Years, in lieu of the abovementioned duties and of the Five thousand Pounds now permanently appropriated by the Colonial Act 35th Geo. 3d[1]– An Annual payment of Thirty Six Thousand Pounds would be the equivalent which His Majesty's Government are of opinion might be fairly asked from the Legislature; I flatter myself that this would constitute a Civil List sufficient to defray the ordinary charges of the Civil Government of the Province;– the basis upon which the Amount of this charge may rest is to be found

[1] 35 Geo. III, Cap. 9.

in the Warrants of the Treasury appropriating the Revenue now at the uncontrolled disposal of the Crown; and I inclose for Your information and guidance a Scheme of Appropriation, which you may lay before the Assembly and which as far as regards its general results may be incorporated into the Bill to be passed for carrying the arrangements into effect.

It would perhaps facilitate the execution of this purpose if I transmit to you in due time the draft of a Bill which with such modifications as yourself and the Law Officers of the Crown in the Colony may deem essential, may be fit to be submitted to the Legislature.

In submitting this proposition to the Assembly you will not fail to assure them that His Majesty has nothing more at heart than the permanent prosperity of His North American Provinces; and that His Majesty trusts that they will see in His Majesty's anxiety to Settle satisfactorily the intricate question to which this dispatch refers, the same desire to consult their welfare which has induced him to direct His Government to propose, for many successive Years, to the Imperial Parliament a great variety of measures calculated to relieve His Colonies from many onerous restrictions upon their intercourse with Foreign Countries and to encourage in the British Market the consumption of the Staple Articles of their produce.

His Majesty has had too many proofs of the Loyalty and Attachment of His faithful Subjects in Canada not to feel assured that they will readily cooperate with His Majesty in endeavouring to provide for the Civil Government of the Colony in a manner which without compromising His Majesty's Rights, may promote the interests and consult the feelings of His people.

I have the Honor to be
My Lord,
Your Lordships Most obedient
Humble Servant

GODERICH

Lt General
The Earl of Dalhousie
&c &c G.C.B.

Endorsed.

Visc^{t} Goderich Instructions respecting Civil list & Finance. One inclosure Rec^{d} 1 Nov^{r}.

GODERICH TO DALHOUSIE.[1]

N°– 11

DOWNING STREET
5th August 1827

MY LORD

Your Lordship will perceive by my Dispatch N°– 10 that I have not proposed to give up to the disposal of the Assembly any portion of that Revenue which is derived from the casual and territorial property of the Crown partly because it is at present of very uncertain (although I trust of increasing) value, and partly because I think it may be available for a purpose which I should not wish to leave to the fluctuating discretion of a popular Assembly, I mean the proper maintenance of the Protestant Clergy; the expence incident to such a charge must necessarily be uncertain in its amount & increasing with the increasing Population and wants of the Country; and although the sale of a portion of the Clergy Reserves authorized by the Act of the Imperial Parliament of the late Session may go some way towards it, it will undoubtedly be inadequate for some time to meet the whole expence; any resources therefore which can be derived from the landed property of the Crown not yet alienated, as well as from the Jesuits Estates & the Seigneural dues, may most beneficially be applied towards making up that deficiency; and it will have the additional advantage of relieving the Army Extraordinaries from the incongruous and inadmissable burthen of supporting the expences of the Protestant Church. The Revenue which may be expected to be annually derived from these sources may, I apprehend, be estimated as follows

Rent of the King's Posts
Rent of the King's Wharfs
Rent of the Forges or Iron works of St. Maurice
Seigneural dues vizt
Droit de Quint
Rentes

Lots & Ventes	£	4050
Average Receipt of Jesuits Estates		1700
Estimated net produce of Licences for cutting timber & sale of Crown Lands		3000
	£	8750

Upon this Sum I propose to charge the following items of expenditure

Salaries & allowances to Protestant Clergy as per Enclosure	£	5150
Allowance to the Catholic Bishop		1000
Salary of the Auditor of Land Patents		200
Clerk of the Ferrars		90
	£	6440

[1] *G. 16, pp. 189-197.*

This sum if deducted from the estimated receipt would leave £2310 as a surplus applicable as circumstances may require to such purposes as may be directed from hence. But you will on no account direct the application of any part of such a surplus without my express authority, as it is of great importance to have in hand at all times a reserve fund capable of meeting any unforseen charges; I allude particularly to any additional expence which the increasing population of the Country may render necessary for the administration of Justice, the charge for which ought not to be left to the uncertainty of annual votes. It is also with a view to meet such a demand that I have proposed in the 4th– Class of the Civil List a sum of £1950 under the head of contingencies. I trust therefore that either from that source, or from the Surplus of the Crown Revenues referred to in this dispatch, that you will be in a condition to meet any such increased expenditure without being compelled to resort to the Legislature for a vote for that purpose. I very much wish that the amount of this item of Revenue had been such as to have enabled me to direct that the whole charge for the Protestant Clergy should be placed upon it, but if I had now directed that portion of it which is now defrayed out of the Parliamentary Grant to the Society for the Propagation of the Gospel & which amounts to £2700, to be thrown upon the Territorial Revenue of the Crown no surplus whatever would have remained.

You will observe that the execution of the arrangement directed in this dispatch is to be contingent upon the settlement of the Civil List question as pointed out in my dispatch N°. 10. If unfortunately the Legislature should refuse to cooperate with you in carrying into effect that most important, & I trust beneficial measure, it will be necessary for His Majesty's Government to consider how far the total Revenue of the Crown can be made to bear the expence of the Civil Government

I have the Honor to be
My Lord
Your Most Obedient
Humble Servant

GODERICH

Lieut Genl
The Earl of Dalhousie
&r &r G.C.B.

Endorsed Viscᵗ. Goderich—Casual & Territorial Revenue & paymᵗ. of Clergy—one inclosure.

GODERICH TO DALHOUSIE.[1]

N° 12.

DOWNING STREET
6th August 1827

MY LORD

Your Dispatch N°– 30 has been received & laid before the King. The subject to which it refers had required my early and most serious attention and my letter N°– 10 was prepared and communicated to the Treasury before Your Lordship's of the 27th– May reached this office. There is nothing in the Dispatch which I am now acknowledging, which induces me to depart from what I had previously thought advisable upon the important subject to which it relates.

It is however possible that notwithstanding His Majesty's anxious desire that a liberal and conciliatory proposition for regulating the Civil expenditure of Lower Canada, should be made to the Assembly, that Body may nevertheless think proper not only to reject the proposition which you are instructed to tender to them, but also to refuse to grant any supplies for even pressing services; It will therefore be convenient that the usual Warrants should be obtained from the Treasury; Of course however these Warrants will not be used except in the contingency to which I have referred. Should you unfortunately fail in your endeavours to induce the Assembly to agree to the grant of a fixed Civil List, I am nevertheless not without hopes that the Revenues within Your reach will be sufficient to defray at least the most material of the charges of the Civil Government. Supposing that the duties now remitted to this Country and the net proceeds of the Post Office shall be placed at Your disposal by An Act of the British Legislature, You will then have at Your command the £33,677 which in my dispatch N°– 10 it is proposed to give up to the Assembly together with the £8750 alluded to in my dispatch N°– 11 derived from the landed property of the Crown being in the whole £42,427 or in round numbers £42,000. The demands to be provided for by Treasury Warrants upon these resources, appear by Your Dispatch N°– 30 to amount to £38,393 so that deducting that charge from the Estimate receipt £42000 there will remain £3,607 applicable to some of the charges, such as the Salary to the Catholic Bishop which in my Dispatch N°– 11 it is proposed to defray out of the Land revenue– This state of things will certainly not be so satisfactory as that which would result from the arrangement of a fixed Civil List, but it would, I trust, be so far equivalent to your most pressing wants as to shew to the Assembly that if they refuse to agree to an accomodation, you are not without resources upon which you can fall back– And if upon a

[1] *G. 16, pp. 200-207.*

more full revision of the Estimates which you have sent home, it should appear that some of the items may be either reduced or postponed, I am sanguine in my hopes that you may be enabled to meet all the difficulties in which the conduct of the Assembly may continue to involve Your Government

I have the Honor to be
My Lord
Your most obedient
Humble Servant

GODERICH

Lieut Gen[l]
The Earl of Dalhousie
&c G.C.B.

Endorsed
From Visc[t] Goderich
In answer to No. 30. Treasury Warrants.
Further instructions on Finance.

DISMISSAL OF MILITIA OFFICERS.

Dalhousie to Huskisson.[1]

N° 68
Militia.

Castle of S[t]. Lewis
Quebec 29[th]. Jan[y]. 1828.

Sir

As the exaggerated and false representations which are circulated in this Province in News Papers opposed to Government, respecting the Demission of various Officers of Militia, may be repeated in the public prints in England, and reach His Majesty's Government, I think it advisable to make you acquainted with the real state of the case.

The temporary laws for regulating the Militia which had been in force for many years and had been from time to time continued for short periods, expired on first May last, in consequence of the Bill, for prolonging their duration having fallen through in the Assembly, after being amended by the Legislative Council, who wished to alter the System:– One of these temporary Acts had *repealed* two useful permanent Militia Laws passed in 1787 & 1789, and the question arose, whether on the expiration of the temporary repealing Statute, the permanent laws came into operation:– His Majesty's Attorney General reported his opinion that they did; And I acted on that opinion, as it was my duty to do:– But as some doubt attended the Question, the party opposed to Government took the opportunity to attack its conduct in this respect with violence, and the consequence

[1] *Q. 182, pp. 20-22.*

was that several Officers of Militia either believing, or affecting to believe, that there was no Militia Law in force refused to attend the Summer Musters, or otherwise exhibited a spirit of disobedience to orders; And these persons have been dismissed wherever the circumstances of their conduct or situation were such as to make an example necessary.

The inclosed General Orders which I have issued during the last season will shew however that the conduct of the Militia has almost universally been such as to merit and receive my warmest approbation.

In some few instances, I have thought it my duty to notify the dismission of particular Officers who had abused the influence they derived from their rank, to support their violent opposition to Government in a manner that outraged the proper and decent respect due, even in opposition, to the constituted Authorities of the State

I have the honor to be
Sir,
Your Most Obedient
humble Servant

DALHOUSIE

R^t. Hon^ble.
W^m. Huskisson
&c. &c. &c.

Office of the Adjutant General of Militia.[1]

Quebec, 12^th. Sept– 1827.

General Order of Militia.

His Excellency the Governor and Commander in Chief takes an early opportunity to express to the Battalions of Militia in Lower Canada, his sentiments on certain recent proceedings, which nearly concern their loyalty and honor.

It is well known that the Laws under which the Militia force has been regulated for many Years, have been enacted for short periods, and have been repeatedly renewed as a substitute for the permanent Laws passed in 1787 & 1789.

These temporary Acts, however, not having been renewed in the last Session of the Provincial Parliament, expired on the 1^st– May; and it was immediately notified to the Militia by His Excellency's directions, that under existing circumstances, the old permanent Ordinances came into force.

Evil disposed persons were not wanting to spread doubts upon the subject; and to these were added gross misrepresentations & calumnies regarding the intentions of the Executive Government, all tending to create discontent and dissatisfaction in the Province, but more particularly to induce the Militia to object against and disobey the orders issued under those Ordinances for the usual Musters in Summer.

[1]*Q. 182. pp. 23-25.*

The Governor in Chief has seen with great satisfaction that the utmost exertions of the ill-disposed have totally failed to disturb the natural disposition of the people to order and obedience. With very few exceptions, and those chiefly, of Officers holding Commissions, the Musters of July and August have been unusually numerous and well attended;– It is therefore an important and most agreeable duty to His Excellency to offer his warmest acknowledgments in approbation of that conduct, by which the Battalions of Militia have shewn their loyalty and proper sense of duty.

But while the Governor in Chief thus gives the reward of praise where it is so well merited – he feels that his duty imperiously calls upon him, at this time, to deprive of the distinction of holding Commissions in the Militia all such persons as have neglected to attend at the musters required by Law, or who by their conduct or language at public meetings have failed in that respect which is due to the Representative of their Sovereign:– This, however, is a work of time and investigation, which though, necessarily attended with some delay, will not fail to receive His Excellency's serious and deliberate consideration.

By Order of His Excellency the Governor General and Commander-in-Chief.

F. VASSAL DE MONVIEL.
Adj^{t}.-General, M.F.

Office of Adjutant Gen^{l}. of Militia.[1]

12th. December 1827.

General Order of Militia.

The Governor in Chief having for some time past occupied himself in considering the reports of Reviews by Officers Commanding Battalions of Militia, has great satisfaction in again expressing his approbation of the general disposition, and orderly conduct of this great national force. The Reviews have been fully attended, and there are but few instances in which the Governor in Chief, could think it at all necessary to express censure– His Excellency therefore conveys to all and to each Battalion his thanks for their Conduct, trusting that next Summer, he shall find no cause to repeat the only disagreeable part of duty which remains for him to perform– that is, to publish the names of those Officers who can offer no sufficient apology for their neglect of duty and absence from Muster.

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[1] *Q. 182, p. 26.*

HUSKISSON TO DALHOUSIE.[1]

N° 23.

DOWNING STREET

28th March 1828.

MY LORD,

I have the Honor to acknowledge the receipt of Your Lordship's dispatch stating that the temporary Laws which had for many Years regulated the Militia of Lower Canada, expired on the 1st of May last and that His Majesty's Attorney General having advised Your Lordship that the old Laws of 1787 & 1789 again came into operation, you had acted on his opinion, and that in general the Musters had been extremely well attended:– But as some doubt attended the question, the party opposed to Government took the opportunity to attack its conduct in this respect with violence, and the consequence was that several Officers of Militia either believing, or affecting to believe, that there was no Militia Law in force, refused to attend the Summer Musters, or otherwise exhibited a spirit of disobedience to orders; and that Your Lordship had dismissed these persons wherever the circumstances of their conduct or situation were such as to make an example necessary. I have to acquaint Your Lordship in reply to that I entirely approve of the measures which you have adopted for bringing into operation the old Militia Laws, and also the dismissal of Officers who have set an example of such decided disrespect and insubordination.

I have the Honor to be

My Lord,

Your Lordship's most obedient

Humble Servant

W. HUSKISSON

Lt General

The EARL OF DALHOUSIE

G.C.B.

&c &c &c

Endorsed

From Mr HUSKISSON Approving of the revival of Militia ordinances & dismissal of refactory Officers.

[1] *G. 17. pp. 21-23.*

PUBLIC DECLARATION BY MEMBERS OF ASSEMBLY.

To Our Constituents.[1]

We the Undersigned, Members of the House of Assembly, residing in the City and District of Montreal, having taken into consideration the Speech pronounced by His Excellency the Governor in Chief on proroguing the Provincial Parliament, in which His Excellency refers us to our Constituents, conceive it our duty to evince in a public and solemn manner, both the respect which we bear to our Electors, and the noble pride which we feel for having, in difficult times, discharged our duties towards them with fidelity and in a manner worthy of those who had chosen us for their Delegates. Representatives of subjects obedient, honest and devoted to the British Government, our line of conduct seemed perfectly traced out for us; Representatives of free born English subjects, our duties were clear and evident; and we appeal with confidence to our Constituents: It belongs to them to judge of our conduct.

In other times and in other circumstances, we should not consider it necessary to enter into any discussion, well assured as we are of not having done any thing which could lose us the esteem and the confidence of our Constituents, the recompense of our labours; but accused in a body, in a grave manner, by a public document, which at the same time that it accuses all of us, takes from us the power of answering as a body, we consider it to be our duty, not to exculpate ourselves, (for this we are sensible is not requisite) but to put it in the power of our Constituents to judge with certainty of the accusations urged against their Representatives.

His Excellency declares to the whole Province that the difficulties existing on a single point have occasioned the rejection of all other measures, which His Majesty's Government has submitted to our consideration.

The House of Assembly sat about thirty days, during which seventy nine Bills were introduced, sixty of which were passed. It is not possible that among so many Bills, there should not have been one relating to some measure recommended by Government; unless we suppose that the House and the Council were occupied with a multitude of measures of public or private utility, none of which the Government thought proper to support by its recommendation. Might it not be said with more accuracy that it is painful to see that, upon the refusal of the House to vote the supplies in the form required, His Excellency should have considered himself obliged to exercise the Royal Prerogative, and to prorogue the Parliament, without giving it time to discuss the measures recommended by His Excellency, or which interested the whole Province though not recommended by His Excellency, and the delay or loss of which His Excellency has with so much sensibility lamented.

His Excellency reproaches us for not having given a suitable attention to the public Accounts of the last year, for not having approved or disapproved them by such a report as would enable the public to judge of the result.

We have given to those Accounts a suitable attention. We have been delayed in our investigation by multiplied difficulties which different public

[1] *Quebec Gazette, 2 April, 1827.*

functionaries made to answer the questions of the special Committee, without the permission of His Excellency. The special Committee having proposed some questions to Messrs. Perceval and Gore, the principal Officers of the Customs, received as the only answer, that these Gentlemen had submitted the questions of the Committee to His Excellency the Governor in Chief. The Committee, by that alone, was prevented from reporting on that part. But, in spite of all these obstacles, it did report; the report is printed, and every person can have cognizance of it.

His Excellency asks us if we have considered the estimates for the present year and granted the supplies required in His Majesty's name, and if our refusal has been accompanied by reasons that can be known and understood by the Country?

His Excellency seems to desire very much that the public and our Constituents should be informed of what has taken place in Parliament; This desire we share with frankness and honesty. We examined these documents; we were immediately convinced that they were in direct opposition to the principles which the House has followed ever since 1818; that they were opposed to the essential rights of our Constituents; that free men worthy of enjoying the benefits and advantages of a Constitution modelled on that of England could not accede to them without sacrificing their dearest rights: The Representatives of such men were in duty bound to refuse such demands: they have done so; and in order that the public might be enabled to know their reasons, they have declared that they would persist in the resolutions and addresses made and passed by the House on this subject, as they are recorded in their Journal. Electors! it is for you to judge if the reiterated demand of an unjust thing can constitute a right to obtain it.

His Excellency asks if we have given proper attention to the Message of His Majesty's Representatives; if we have received them, if we have answered them, according to the rules and forms of Parliament, or according to the respect which each branch of the Legislature is bound to observe towards the others.

His Excellency admits that there ought to exist a mutual respect among the different branches of the Legislature: The Speech of His Excellency, whilst it admits the principle, does not in our opinion, seem a very convincing instance of its application.

These questions are too general: It appears to us that it would have been of more avail to direct our attention or rather that of the public to such or such a particular Message, in order to give us the opportunity for explaining ourselves. Far from neglecting such messages in general we have even proceeded on messages of former Sessions, and if we have not taken them all into consideration, it must not be forgotten that His Excellency is the sole Judge respecting the duration of Parliament, and that to him alone it belongs to terminate its Sessions when such is his pleasure. His Excellency found it proper to prorogue the Parliament after a Session of some weeks, at a time when there was still before it a great deal of business and when the House of Assembly still counted nearly forty members present.

But if this reproach refer to our not having voted an address of thanks to His Excellency for each of those messages, we avow the fact; but it is the usage of the House not to lessen the merit of those Addresses by multiplying them without necessity; they are reserved for important occasions which require the expression of public thanks. If the House have not more frequently voted such Addresses, it is unfortunately because an opportunity for doing so has not been afforded; it is not exactly its fault.

His Excellency tells us: These are the questions which you are to answer to your own consciences, as men who are bound by oaths of fidelity to their Country and to their King.

As for the oath of fidelity to the King; there is not a person in the Province, be his situation what it may, who would dare to say of any Member of that Assembly, that he failed in it. The people of this Province, the Electors, know too well what loyalty is, they have given too many convincing proofs of it, to permit any one to suppose that they would choose for Representatives men doubtful on this point.

As to the oath of fidelity to the Country– who has ever heard any man speaking of an oath of fidelity to his native Country?

Home! Home! that single word is enough.

His Excellency tells us: that we have refused the necessary supplies: that the Militia Bill has not been passed, that no provision has been made for the maintenance of prisoners, of the insane, of foundlings, for education, for establishments of charity, and that public and local improvements have been obstructed.

Electors! It is a disagreeable duty for us to assure you that there are here as many errors as accusations. If the supplies have not been granted it is because they have been required in such a manner that your Representatives could not grant them without violating your Interests and their duty. But they have offered to pass a Bill similar to that of 1826 and similar to the Act of 1825, which was sanctioned and carried into execution– This they are still disposed to do.

The Militia Bills had been continued for two years. The House had inserted in the Bill of this year a Clause which annulled the Act of the 57th, inasmuch as it provided for the pay of the Militia Staff. It had received, on the 7th of February, a Message from His Excellency concerning that subject, as well as the contingent expences of the Militia, and the appropriation of a certain sum to furnish arms to the Militia in certain cases. The House wished to make that Message the object of a separate measure for which it only wanted time. But the Council was pleased to amend the Bill which continued the Militia Acts, and to strike out the Clause which annulled the Act of the 57th which seemed to have the effect of re-establishing the pay of the Militia Staff. This amendment was inadmissible. We were disposed to take efficacious measures to supply the loss of that Bill; but we were prevented by the precipitate prorogation of Parliament.

The House passed a Bill for the insane and foundlings as usual. Contrary to all parliamentary usage, the Council amended that Bill. Unable, according

to rule, directly to consider the amendments made by the Council to a Bill of supply, and unwilling, nevertheless, that the unhappy objects of public Commiseration should, on this account, suffer, the House passed a second Bill incorporating the amendments of the Legislative Council, and sent it back there on Tuesday the sixth March. There it has since remained. We might be disposed to think that time alone was wanted to the Council for passing that second Bill; but the House sent, the day after, three other Bills to the Council at eleven o'clock in the forenoon: these Bills were examined and passed before three o'clock in the afternoon, and were sanctioned or reserved by His Excellency on the same day.

As for what relates to Education and to charitable establishments, we appeal with confidence to the proceedings of the House of Assembly.

It has voted about £15,000 for Education: if the Bills that were to carry into execution these votes have not been passed, if they have remained without effect in the Legislative Council, if it was not possible to perfect them in the Assembly, is it the fault of that House? It has done all that was in its power, and it would be supremely unjust to render it responsible for the acts of the other branches of the Legislature.

Let those in fault bear the burthen between them, they will diminish the weight by dividing it. As for charitable establishments the House has not neglected them either? it provided with liberality for foundlings, for the insane, for the sick and the infirm in the different Districts, for the support of the Hospital for Emigrants at Quebec, for the General Hospital at Montreal, &c.; And, we cannot too often repeat it, the House is not to blame if these votes have not been carried into execution.

We have been reproached for not having settled the public Accounts during *seven years.* If recourse be had to the Journals of the House, it will be found that these accounts have been settled as far as depended on us in 1823, and in as complete a manner as we then had it in our power to do.

Electors! Of our conduct we have considered it a duty to give you this exposition which, at the same time, is a refutation of His Excellency's Speech. We have not sought the occasion; it has been offered to us: nay, we have been compelled to this step, by the attempt to destroy us in the opinion of the public and in that of our Constituents. That public opinion is in itself a power to which the greatest functionaries are amenable in all cases, even when the Laws, in their ordinary course, cannot reach them. Those who appeal to it against us are not above its reach; in the present cause, we respect it without fearing it.

L. J. Papineau.
Hugues Heney,
J. Leslie,
Joseph Valois,
Joseph Perault,
Austin Cuvillier,
J. M. Raymond,
F.A. Quesnel.

REJECTION OF SPEAKER, LOWER CANADA, 1827.

Dalhousie to Huskisson.[1]

Confidential

Quebec 22nd November 1827

Sir

In order to avail myself of the departure of one of our best and last ships of this Season, I think it my duty on the hurry of the moment to inform you of the circumstances which have occurred on the meeting of the Provincial Parliament on the 20th– Instant.

I shall lose no time in preparing a more full and circumstantial detail by another dispatch [2] when I have more leisure than I can at present command.

The violent speeches and acknowledged writings of Mr. Papineau and the leaders in his faction succeeded so far, in the result of the elections during the last summer, that the returns greatly added to the influence he before possessed in the Assembly: It was therefore quite obvious that any proposal to be made in this Session, were he to be chosen Speaker would without any doubt be met by the same resolutions which he had before supported and which compelled me to prorogue and dissolve the last Parliament:

Although not declared by me, yet it was generally believed that I could not and would not confirm the choice of the Assembly if it fell upon Mr. Papineau.

Yesterday Mr. Papineau was presented to me in the usual manner as Speaker and was refused in the terms, copy of which I inclose: I thought it right to intimate to the Assembly that I had special commands of His Majesty to communicate to them; and I desired them to present another person on the 23rd– instant:– Upon their return to the House, Mr. Papineau seated himself in the Chair; but, debates arising, he quitted it, and after some discussion the Assembly adjourned until today; when, on their meeting they declared by the inclosed Resolutions and by the address founded upon them, (which I of course declined receiving,) that the King's approbation was mere form and in no wise necessary, and that the House would insist upon their choice of Mr. Papineau as Speaker, without such approval.

Whatever may be thought of such proceedings, I saw but one course for me to pursue,– to maintain that which has ever been considered a Prerogative of the Crown,– admitting of no such interpretation of any right of the Crown being reduced to a mere form of empty words;– and to insist upon it's exercise in a case where the Public Interests appeared to me to require it: I had immediate recourse to the advice of the Executive Council, and am happy to say that with their advice confirmed by the opinion of His Majesty's Attorney General, then also present, it was resolved that in order to prevent further violent resolutions or encroachments by the Assembly, on the constitution and usages of Parliament, a Proclamation should issue immediately to prorogue the Legislature;

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[1] *Q. 179, pp. 453-459.*

[2] *Ibid, pp. 464-476.*

and this will accordingly be done before the hour, tomorrow, to which the Assembly have adjourned.–[1]

I think it right to add that these irregular proceedings of the Assembly seem to have been very generally looked for, and that, however disapproved among the well disposed & reflecting part of the community, they do not occasion any considerable public excitement. –

I have the honour to be
Sir
Your most obedient
humble servant

DALHOUSIE

The Right Honourable
W. Huskisson M.P.

Endorsed: Three Inclosures

M[r]. Papineau,

AND

Gentlemen of the Assembly,

I am commanded by His Excellency the Governor in Chief to inform you that His Excellency doth not approve the choice which the Assembly have made of a Speaker, and in His Majesty's Name His Excellency doth accordingly here disallow and discharge the said choice:–

And it is His Excellency's pleasure that you Gentlemen of the Assembly do forthwith again repair to the place where the Sittings of the Assembly are usually held and there make choice of another person to be your Speaker, and that you present the person who shall be so chosen to His Excellency in this House on Friday next at two o'clock for his approbation.–

And I am further directed by His Excellency to inform you, that as soon as a Speaker of the Assembly has been chosen with the Approbation of the Crown, His Excellency will lay before the Provincial Parliament certain Communications upon the present State of this Province which by His Majesty's express Command he has been directed to make known to them.–

House of Assembly

Thursday 22[nd] November 1827

Resolved, That it is necessary for the discharge of the duties imposed upon this House, viz: to give its advice to His Majesty in the enactment of Laws for the peace, welfare and good government of this Province, conformably to the Act of the British Parliament under which it is constituted and assembled, that its

[1]"After debate it was ordered by His Excellency with the advice of the Council, that a Proclamation be immediately issued for proroguing the Provincial Parliament, and that the Attorney General prepare the Draft of a Proclamation accordingly. Ordered also that the said Proclamation be issued in Triplicate (under the great seal of the Province) that one thereof remain of record in the office of the Clerk of the Crown in Chancery that one be sent to the Speaker of the Legislative Council and one to the Clerk of the House of Assembly. Ordered also, That the said Proclamation bear Test this 22[d] day of Novr and be immediately published in an official Gazette extraordinary." Minutes of Executive Council, Nov. 22, 1827—*Lower Canada, State Book K., pp. 246-247.*

Speaker be a person of its free choice independently of the will and pleasure of the Person entrusted by His Majesty with the Administration of the local Government for the time being.

Resolved, That Louis Joseph Papineau, Esquire, One of the Members of this House, who has served as Speaker in six successive Parliaments has been duly chosen by this House to be its Speaker in the present Parliament.

Resolved, That the Act of the British Parliament under which this House is constituted and assembled, does not require the approval of such person so chosen as Speaker, by the Person administering the Government of this Province in the name of His Majesty.

Resolved, That the presenting of the person so elected as Speaker, to the King's Representative for approval is founded on usage only, and that such approval is and hath always been a matter of course.

Resolved, That this House doth persist in its choice, and that the said Louis Joseph Papineau, Esquire, ought to be and is its Speaker.

Attest

Wm. LINDSAY
Clk Assy.

House of Assembly,

Thursday 22d. November 1827.

Report.

Several Resolutions were passed persisting in the due election of Mr. Papineau as Speaker, Copies of which are inclosed.

After which Mr. Papineau came into the House and took the Chair.

An Address was then voted to His Excellency, Copy of which is inclosed.

And then the House adjourned 'till tomorrow at ten oClock AM

Attest

Wm. LINDSAY
Clk Assy.

The divisions on all the
Resolutions were yeas 41
Nays 4

Mr. Solicitor General Messrs. Christie
Stuart and Young.

HUSKISSON TO DALHOUSIE.[1]

DOWNING STREET
10. Jan 1828

Separate

MY LORD,

I have the Honor to acknowledge the receipt of Your Lordship's dispatch of the 22[d]– Nov[r]– last, (marked confidential) communicating to me the intelligence that you had deemed it expedient to disallow the choice which the House of Assembly had made of M[r]– Papineau as their Speaker. I have learnt with much regret that Your Lordship had felt yourself compelled to take so strong a measure, in the exercise of a Prerogative of the Crown, which has been only once acted upon in the British Parliament, which was then disputed by the House of Commons, and from the protracted discussion of which upon that occasion both parties seceded by a tacit compromise; judging it more consistent with prudence to abstain from urging to the utmost claims of so delicate a nature.

This step however having been taken, and the Assembly having persisted in their choice, a prorogation was perhaps the only course which was open for Your Lordship to take: and I now avail myself of this opportunity to desire that Your Lordship will further prorogue the Provincial Parliament 'till Thursday the 1[st]– of May. In the mean time the subject will engage the immediate attention of His Majesty's Government; and I shall hope by the next opportunity to convey to Your Lordship the fullest information as to the measures which it will be necessary to adopt.

I have the Honor to be
My Lord,
Your Lordship's Most obed[t]–
Humble Servant

W. HUSKISSON

Lt General
The Earl of Dalhousie
G.C.B.
&c &c &c

Endorsed

M[r] Huskisson, respecting the disallowance of M[r] Papineau as Speaker of the House of Ass[y].

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[1] *G. 17, pp. 5-7.*

CLERGY RESERVES, UPPER CANADA.

Report of Executive Council, 16 February, 1828.[1]

Report of the Executive Council, on a Despatch from the Right Honorable William Huskisson relative to the Sale of a part of the Clergy Reserves in Upper Canada.

Read again 26th February, 1828.

The Council having had under consideration the British Statute 7th and 8th Geo. 4th. Chapter 62, to authorize the Sale of a part of the Clergy Reserves in this Province, and also; Mr Secretary Huskisson's Despatch of the 20th November 1827 thereon–

Respectfully beg leave to recommend:

1st That Mr Robinson the Commissioner appointed to superintend the Sales of the said Reserves, do previously to his entering upon the duties of his Office, enter into Security, to the satisfaction of Your Excellency in £5000 – and two Sureties in £2500 – each, Conditioned for the faithful performance of his Office, and the duly accounting for, and paying over all Monies which may come to his hands in executing the same.

2nd That the Surveyor General be directed to furnish Mr Robinson (with as little delay as possible) with a Return of all the Clergy Reserves in the Province, Specifying such as are under Lease, with the names of the Lessees, and the Periods at which such Leases will respectively expire.

3rd That the Proper Officer be directed to furnish Mr. Robinson (with the least possible delay) with a Return of the Arrears of Rent due upon the Clergy Reserves under Lease, up to the last Quarter day.

4th. That Mr Robinson be directed to proceed with the necessary inquiries, to enable him to Report to Your Excellency, such Lots as he may propose to Sell during the current year, having regard in the Selection, to the primary object pointed out in the Despatch: Specifying also; the peculiar circumstances inducing his recommendation: And that he likewise be Instructed; to state the Prices at which he conceives the respective Lots should be Sold.

5th That Lots under Lease be disposed of at Private Sale, regard being had to the interests of Lessees thereof, at prices to be previously sanctioned by Your Excellency.

6th That the Lots not under Lease, be disposed of in the same way, unless upon future Consideration, some other mode should be found preferable.

7th That the Lots be Payable by Instalments as follows:– Ten per Cent upon Entering into the Agreement, and the residue in nine equal annual Instalments with Interest yearly, Or at any earlier period in the option of the Purchaser.

8th That actual Settlement be a Condition in every Case–

9th That the Payment of the Arrears of Rent upon Leased Lots, be a Condition precedent on all occasions of Sale.

10th That all Rents received by Mr Robinson be paid over Half Yearly.

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[1] *Upper Canada, State Book, H., pp. 441-442.*

11th. That Mr Robinson be authorized to incur such necessary Contingent Expences as the Nature, and duties of this Office render indispensable.

12th That Mr. Robinson be directed in Reporting upon the proposed Sales for this year, to suggest such measures with a view to the establishment of General Regulations in the Premises as he may conceive calculated to promote the objects mentioned in Mr. Secretary Huskisson's Despatch.

13th Recommended that the Act of the Imperial Parliament, and the Measures adopted for carrying the same into effect, with the appointment of Mr. Robinson for that purpose be Promulgated by Proclamation.

All which is respectfully Submitted.

Signed, J. BABY,
Presd. Cr.

RELIGIOUS DISABILITIES.

Upper Canada Statute 9 Geo. IV Cap. II.[1]

An Act for the relief of the religious societies therein mentioned.

[Passed March 25, 1828.]

Preamble.

Whereas religious societies of various denominations of Christians find difficulty in securing the title of land requisite for the site of a church, meeting house, or chapel, or burying ground, for want of a corporate capacity to take and hold the same in perpetual succession; and whereas it is expedient to provide some safe and adequate relief in such cases; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great Britain, entitled, "An act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled, 'An act for making more effectual provision for the government of the province of Quebec, in North America, and to make further provision for the government of the said province,'" and by the authority of the same, That whenever any religious congregation or society of Presbyterians, Lutherans, Calvinists, Methodists, Congregationalists, Independents, Anabaptists, Quakers, Menonists, Tunkers, or Moravians, shall have an occasion to take a conveyance of land for any of the uses aforesaid, it shall and may be lawful for them to appoint trustees, to whom and their successors to be appointed in such manner as shall be specified in the deed, the land requisite for all or any of the purposes aforesaid may be conveyed; and such trustees, and their successors in perpetual succession, by the name expressed in such deed,

Provision in behalf of certain religious societies; allowing lands to be held for their use by trustees and their successors in perpetual succession.

[1]*Statutes of Upper Canada, 1791-1831, p. 464.*

shall be capable of taking, holding, and possessing such land, and of commencing and maintaining any action or actions in law or equity for the protection thereof, and of their right thereto.

No one congregation shall hold more than five acres.

II. And be it further enacted by the authority aforesaid, That there shall not be held in trust for the purposes aforesaid more than five acres of land for any one congregation.

Trust deeds to be registered.

III. And be it further enacted by the authority aforesaid, That such trustees shall, within twelve months after the execution of such deed, cause the same to be registered in the office of the register of the county in which the land lies.

Conveyances heretofore made for the purposes of this act made valid.

Registry.

IV. And be it further enacted by the authority aforesaid, That all conveyances made before the passing of this act, for all or any of the purposes aforesaid, shall be good and valid in law, in like manner as if the same had been made after the passing of this act, and subject to the provisions of this Act; provided such conveyance shall have been already registered, or shall be hereafter registered as aforesaid, within twelve months after the passing of this act.

UPPER CANADA NATURALIZATION ACT 1828.

AN ACT,[1]

To secure to and confer upon certain inhabitants of this province, the civil and political rights of natural born British subjects.

[Assented to by his Majesty in Council, May 7th, 1828.]

Preamble.

WHEREAS it is expedient to remove by law doubts that may have arisen as to the civil rights and titles to real estate of some of the persons hereinafter mentioned, and to provide by some general law for the naturalization of such persons not being by law entitled to be regarded as natural born subjects of his Majesty, as are actually domiciled in this province; be it therefore enacted by the King's most excellent Majesty, by and with the advice and consent of the legislative council and assembly of the province of Upper Canada, constituted and assembled by virtue of and under the authority of an act passed in the parliament of Great Britain, entitled, "An act to repeal certain parts of an act passed in the fourteenth year of his Majesty's reign, entitled, 'An act for making more effectual provision for the government of the Province of Quebec, in North America, and to make further provision for the government of the said province,'" and by the authority of the same, That all persons who have at any time received grants of land in this province from the crown, and all persons who have held any public office in the province, under the great seal or privy seal of the province, or under the sign manual of the governor, lieute-

Certain descriptions of persons admitted to, and confirmed in the privileges of British birth.

[1] *Statutes of Upper Canada, 1791-1831, pp. 477-480.*

nant governor, or person administering the government of the province, and all persons who have taken the oath of allegiance or being of the persons who by the laws of this province are allowed to affirm in civil cases, have made the affirmation of allegiance to his Majesty, or his Majesty's predecessors, before any person duly authorized to administer such oath or affirmation, and all persons who had their settled place of abode in this province before the year of our Lord one thousand eight hundred and twenty, and are still resident therein, shall be, and are hereby admitted and confirmed in all the privileges of British birth, and shall be deemed, adjudged, and taken to be, and so far as respects their capacity at any time heretofore, to take, hold, possess, enjoy, claim, recover, convey, devise, impart, or transmit, any real estate in his Majesty's dominions, or any right, title, privilege, or appurtenance thereto, or any interest therein, to have been natural born subjects of his Majesty, to all intents, constructions, and purposes, whatsoever, as if they and every of them had been born in his Majesty's united kingdom of Great Britain and Ireland, and that the children, or more remote descendants, of any person or persons of either of the foregoing descriptions who may be dead, shall be, and are hereby admitted to the same privileges which such parents or ancestors, if living, could claim under this act: Provided, nevertheless, That no one (except females) of either of the above description of persons who has not taken the oath, or being of those persons who are allowed by the laws of this province to affirm in civil cases, has not made the affirmation of allegiance before some person duly authorized to administer the same, shall be entitled to the benefits of this act, unless he shall take the said oath or affirmation (as the case may be) before some person duly authorized to administer the same.

Their children or descendants.

Oath of allegiance required.

All persons domiciled in this province on the 1st of March, 1828, and residing seven years, to be deemed subjects.

II. And be it further enacted by the authority aforesaid, That all persons actually domiciled in this province on the first day of March, one thousand eight hundred and twenty-eight, not being of either of the descriptions of persons before mentioned, who shall have resided, or shall continue to reside therein, or in some other part of his Majesty's dominions, until they shall have been resident inhabitants of his Majesty's dominions for the space of seven years continually, without having been during that time stated residents in any foreign country, shall be deemed and adjuged, and taken to be, and so far as respects their capacity at any time heretofore, to take, hold, possess, enjoy, claim, recover, convey, devise, impart, or transmit, any real estate in this province, or any right, title, privilege, or appurtenances thereto, or any interest therein, to have been natural born subjects of his Majesty, to all intents, constructions, and purposes whatsoever, as if they, and every of them, had been born within this province: Provided, nevertheless, That no one of the persons described in this clause (except females) who at the passing of this act has been resident in his Majesty's dominions seven years continually as afore-

said, shall be entitled to the benefits of this act, unless within three years from and after the passing of this act, if at the said passing of the act, he shall be of the age of sixteen years or upwards, (or if he shall not at the said passing of the act be of the said age, then within three years after he shall attain the said age,) he shall take and subscribe the oath in the schedule to this act annexed, marked A., or being of those persons who are allowed by the laws of this province to affirm in civil cases, shall make affirmation to the same effect, before the register or deputy register of some county in this province, and that no one of the persons described in this clause, who has not been resident as aforesaid seven years continually in his Majesty's dominions, shall be entitled to the benefits of this act, unless within three years after he shall have completed a stated residence of seven years continually, as aforesaid, in his Majesty's dominions, (if at the completion of such residence he shall be of the age of sixteen years or upwards, or if at that time not of that age, then within three years after he shall have attained that age,) he shall take and subscribe such oath, or make such affirmation.

Oath to be taken, or affirmation.

(Period for taking the oath extended to four years from 16th March, 1831, and to the end of the ensuing session. See 1st Wil. IV, c. 8, s. 2.)

False swearing, perjury.

III. And be it further enacted by the authority aforesaid, That any person who shall wilfully swear falsely, or make false affirmation in making said oath or affirmation before the register or his deputy, under the provisions of this act, shall be deemed guilty of wilful and corrupt perjury, and that every such person shall, on conviction thereof, forfeit all the privileges and advantages which he would otherwise by such oath or affirmation have been entitled to under this act; but that the rights of others in respect to estates derived from or held under such person, shall not be thereby prejudiced.

But rights of others shall not be prejudiced thereby.

Registers may administer the oaths, and shall keep registers.

IV. And be it further enacted by the authority aforesaid, That the register of each and every county in this province, or his deputy, shall administer the oath or affirmation by this act required, to any person above the age of sixteen years who shall desire to take the same, and shall keep books of registry, in the beginning of which shall be written the oath and affirmation required by this act, and which shall contain the columns and specifications described in the second schedule to this act annexed, marked B., and that in the column appointed for that purpose, the person making the oath or affirmation shall set his signature, or if unable to write, his mark, in the same line of the register in which entry is made of the name and description of such person.

Duplicate registers to be made and how preserved.

V. And be it further enacted by the authority aforesaid, That duplicate books of such registry shall be kept, both of which being original, shall contain the actual signatures or marks of the person subscribing, and that on or before the thirty-first day of December, in each and every year, the register shall transmit one of the originals thereof to the secretary of the province, for the time being, and that

the said books of registry shall remain and be preserved as public records in the said offices respectively.

In case of loss of registry, how supplied.

VI. And be it further enacted by the authority aforesaid, That if from any casualty or otherwise either of such original registers or any part thereof, shall be lost or destroyed, it shall be supplied by a copy taken from the other original of such register, remaining in the office of the register or secretary of the province, (as the case may be,) and attested as a true copy upon the oath of the officer having custody of the same, made before any commissioner for taking affidavits in the court of king's bench, which copy so attested shall be regarded to all intents and purposes as the original register.

Extract of register to be evidence.

VII. And be it further enacted by the authority aforesaid, That a copy or extract from any book of registry, made under the authority of this act, of the whole entry made in such register, with respect to any person whose name is recorded therein, and certified by the register or by the secretary of the province, for the time being, or their respective deputy or deputies, shall be deemed and taken to be sufficient evidence of the naturalization of the person therein described.

Register shall verify his books on oath.

VIII. And be it further enacted by the authority aforesaid, That whenever any register shall transmit any book of registry to the secretary of the province, as hereinbefore provided, he and his deputy, if he shall have a deputy, shall at the end of such book of registry verify the same on oath, to be taken before some one of his Majesty's justices of the peace, in which the said register and his deputy shall severally depose that to the best of his or their knowledge and belief, such book of registry forms a true and correct record of the statements made to him or them by the several persons therein described, and which they severally verified by oath or affirmation taken before him or them.

No proceedings to be had under this act after 1850.

IX. And be it further enacted by the authority aforesaid, That after the first day of January, in the year of our Lord one thousand eight hundred and fifty, no further oaths shall be administered, or proceedings had, for the purpose of being naturalized under this act.

Penalty for omitting to verify record.

X. Provided always, and be it further enacted by the authority aforesaid, That if any person to whom it shall belong to attest the truth of any such record, shall neglect or omit to attest the same in manner aforesaid, he shall forfeit and pay the sum of two hundred pounds, to be recovered by information in his Majesty's court of king's bench; but such omission shall not prejudice the right of any person who may have taken the oath or made the affirmation required by this act, or preclude him from receiving a certificate or extract, according to the provisions thereof.

Alphabetical lists.

XI. And be it further enacted by the authority aforesaid, That a general alphabetical list shall be made and kept by the secretary of

this province, and by the several registers, of the sir names and christian names of all persons whose names and descriptions are recorded in the several books of registry, referring to their place in such books respectively, and that such list and books shall be open at all times to inspection, during the hours of business in such office, and that any person desirous of searching in the said list or books, shall pay to the officer keeping the same, one shilling, for each person whose name he shall desire to search for.

Books to be left open for inspection.

Fee for search.

XII. And be it further enacted by the authority aforesaid, That for administering the oath or affirmation as aforesaid, making the entry required by this act, and giving a certified copy or extract of such entry, the register or his deputy shall be entitled to demand and recover from every person making such oath or affirmation, the sum of one shilling and three pence; and that the register and secretary of the province, and their respective deputies, shall be entitled to demand and receive for searching and giving such extract at any other time, the sum of one shilling; and that no more or other fees than are expressly allowed by this act shall be demanded or received for any services done under this act, by the register or by the secretary of the province, or their respective deputies.

Fees.

XIII. And be it further enacted by the authority aforesaid, That if any person, not entitled to be regarded as a natural born subject of his Majesty, who at the time of the passing of this act was domiciled in this province, shall die before the period limited by this act for his taking the oath, according to the provisions thereof, such person shall be nevertheless deemed to have been a natural born subject of his Majesty, so far as regards the taking, holding, imparting, and transferring of any real estate, by grant, marriage, dower, devise, or inheritance.

Remedy in case of persons dying before they can be naturalized under this act.

XIV. And be it further enacted by the authority aforesaid, That nothing in this act contained shall be taken to repeal, or in any manner alter or affect any statute passed by the legislature of this province, respecting the qualification of voters for members to serve in the assembly of this province, or the eligibility of members to serve in the said assembly, or in any manner to affect or interfere with a certain act of the legislature of this province passed in the fifty-fourth year of his late Majesty's reign, entitled, "An act to declare certain persons therein described, aliens, and to vest their estates in his Majesty," or with any proceedings had thereupon, or to repeal any laws now in force in this province for the naturalization of foreigners.

Acts respecting eligibility to the Assembly, or 54th Geo. III, c. 9, not to be affected by this act.

XV. And be it further enacted by the authority aforesaid, That from and after the passing of this act, no person shall be disturbed in the possession, or shall be precluded from the recovery, of any lands, tenements, or hereditaments, in this province, on the ground of

Remedy with respect to estates held by aliens, or derived thro' aliens.

his or her being or having been an alien, or on the ground of any person from or through whom he or she may claim, being or having been an alien, provided the person against whom such disability shall be so objected, being a female, was resident in this province on the twenty-sixth day of May, in the year of our Lord one thousand eight hundred and twenty-six, or being a male, was resident in this province on the said twenty-sixth day of May, and was then actually under the age of sixteen years.

Exceptions in certain cases.

XVI. And be it further enacted by the authority aforesaid, That in all cases where any person claiming to hold as next entitled, on account of any person nearer in the line of descent having been an alien, shall in virtue of such claim have taken actual possession of any real estate, before the said twenty-sixth day of May, and have made improvements thereon; and also, in all cases where any person claiming to hold as next entitled, on account of the person nearer in the line of descent having been an alien, shall have actually sold or departed with, or shall have actually contracted to sell or depart with his real estate, before the said twenty-sixth day of May, no person being at that time in adverse possession of the same; the provisions of this act shall not extend to render invalid any right or title to such estate, but such right or title shall be taken and adjuged to be as if this act had not passed.

A.

Schedules.

I do swear, [or being one of the persons allowed by law to affirm in civil cases, do affirm,] that I have resided seven years in his Majesty's dominions, without having been during that time a stated resident in any foreign country, and that I will be faithful and bear true allegiance to the Sovereign of the united kingdom of Great Britain and Ireland, and of this province, as dependent thereon.

B.

Name	Present Residence	Addition, Degree or Occupation	Signature	Date of Registry	No. of Entry

HUSKISSON TO MAITLAND.[1]

DOWNING STREET
LONDON 10. May 1828.

No. 27.

Sir P. MAITLAND

SIR/.

A Bill passed by yourself with the advice of the Legislative Council & Assembly of the Province of Upper Canada, intituled "An Act to ensure to & confer upon certain Inhabitants of this Province the Civil & Political Rights of natural born British Subjects" having been referred by His Majesty in Council to the Lords of the Committee of Privy Council for the affairs of Trade & Foreign Plantations, that Committee have reported to His Majesty their opinion that the said Act ought to be confirmed; & I have the honor herewith to transmit to you an Order of His Majesty in Council approving that Report, and confirming the said Bill accordingly.

In humbly advising The King to confirm this Act, His Majesty's Government have not been insensible to the objections derived from the general principles of Legislation to which such a Law is apparently open. It certainly is not the custom of this or any other nation to impart the privileges of naturalization to Aliens without requiring from them some probationary term of residence, or taking from them some other security for their good conduct & faithful allegiance. It is not, however, the importance of this general principles, [sic] but its applicability to the present case which is in question. The persons whom this Act will naturalize could not with justice be regarded in the same light as any other Aliens. By an error common to themselves, & to the local Government, they have lived for many years in the belief that they were Subjects of His Majesty, & in the enjoyment of some of the most important rights incident to that character. Nor can it be denied that the error was natural & venial. The War which ended in establishing the independence of the United States of America, was an event so anomalous that it might readily mislead even the most intelligent & well informed persons as to its real effect upon their national character. When therefore, under such peculiar circumstances, these Aliens had not only been permitted but encouraged to regard themselves as British Subjects, it would not have been consistant with justice or good policy to impose on them the same conditions of naturalization as upon Aliens in general

It is indeed not improbable that some few cases may fall within the operation of the general rules established by this Act, which are not really entitled to so favorable a consideration. But this is an inconvenience inseparable from all legislation. It is scarcely possible to act in affairs of this nature upon any general principle which will not

[1] *Q. 372A, pp. 22-31.*

embrace some particular cases beyond the real intention of the Legislature.

It will, therefore, be destinctly understood that the ordinary rules respecting the naturalization of Aliens have been relaxed on the present occasion, not as being in themselves unimportant, but as being inapplicable to the very peculiar situation of the parties immediately concerned. The Act, therefore, must not be drawn into precedent on any future occasion.

H.M^{y} Government have been much fortified in their opinion of the propriety of conforming [sic] this Act, by observing that the Bill which passed the Legislative Council of Upper Canada on the 28th– of Nov^{r}–1825,[1] not only adopts the principles of the Law under consideration in their fullest extent, but even carries them much further. As the Bill of 1825 was expressly recommended to the Local Legislature by your Excellency, & enforced in the House of Assembly by the Attorney General in a Speech which was subsequently published for general information, the general Provisions of the present Act must be considered as having had the express sanction of the Members of the Executive Government of the Province

Passing from the general principles of this measure to its more particular details, I observe that the Preamble of the Bill is defective, because it omits to notice the Statute 7. Geo. 4. Cap. 68 under the authority of which alone the Provincial Legislature had power to pass such a Law, and because it does not refer to the peculiar circumstances which alone render such an enactment consistent with sound policy. The omission to record those circumstances may at some future time when the history of the transaction is less distinctly remembered, give to this Act an apparent character very remote from the real intention of those by whom it was framed

It is to be regretted that the Bill should profess to convey privileges beyond the limits of the Province itself, because such expressions may involve in a serious practical error persons who may be ignorant of the limited effect of the laws passed by any subordinate Legislature. I perceive some deviations in this Act from the suggestions made by Lord Goderich in his dispatch of the 10, of July last. Thus a residence in any part of H.M's Dominions is to be taken into account in computing the term of seven years, & the 1 of March 1828, in substitute of the 28, of May 1826, as the latest time from which that term may commence. Although H.M's Government continue to think that the act would have been better framed, if in each of these particulars the recommendations of Lord Goderich had been more closely followed, they are not unwilling to defer to the judgment of the Legislative

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[1]This was the Bill sponsored by the Executive in conformity with Lord Bathurst's instructions. It was amended by the Assembly in such a way as to make it unacceptable to the Council. A conference was held but the two houses failed to reach an agreement. *See above pp. 296-301.*

Council and Assembly, upon questions to the right solution of which exact local information may be so peculiarly necessary.

I cannot, however, but regret that the Local Legislature did not deem it convenient to separate the subject of the Title to Lands, from the subject of Naturalization, according to the suggestion of Lord Goderich. I fear that the consequence will be to revive these discussions at some future time, in order to set at rest many questions respecting the property of deceased Aliens to which this Bill does not advert.

In immediate connection with the present subject, I am to acknowledge the receipt of your despatch dated the 13th– of March last N°– 13 transmitting two Petitions addressed to His Majesty by the House of Assembly of the Province of Upper Canada I have laid those Petitions before the King, & His Majesty has been pleased to receive very graciously the assurances made to him by the House of Assembly of their attachment to his person & their reliance on the justice & liberality of His Government. I have it at the same time in command to state that the House of Assembly could render to His Majesty no more acceptable proof of that loyalty, by which he is entirely persuaded they are animated than in cultivating a cordial good understanding with yourself.

The passage in Lord Goderich's despatch of the 10, of July last which has given occasion to the recent discussion between the House of Assembly & yourself appears unfortunately to have been entirely misunderstood. Lord Goderich did not mean to intimate that any representation had been made by you, or under your sanction, of the probable acquiescence of the Colonists in the measures recommended by Lord Bathurst. Lord Goderich intended simply to explain the fact that Lord Bathurst had not acted without grounds which reasonably appeared to him sufficient to justify the hope of a general concurrence in his recommendations. But it is right to state, in the most explicit manner, that his Lordship was not led to entertain that expectation by any statement proceeding directly or indirectly from yourself.

I am unwilling to enter upon any review of the protracted discussions to which the question of the naturalization of Aliens in Upper Canada has given rise But it is due to your Excellency & to the Members of the Legislative Council of Upper Canada to repeat in the most unequivocal terms the acknowledgment already made by Lord Goderich that H.Ms Government in this Country are solely & exclusively responsible for the measures recommended by Lord Bathurst in August 1826, & by Lord Goderich in July 1827, & that it rests with them to justify those measures, whenever a proper occasion may arise. The Ministers of the Crown will at all times be ready to bear the most ample testimony to the propriety of your own conduct in proposing the two Bills of 1826 & 1827 to the Legislative Council & Assembly.

You Acted in strict conformity with your successive instructions, & for those Instructions you certainly are not responsible.

Having stated thus much in justification of the measures of the Government of the Province, I purposely abstain from making any remark on the communications between yourself & the House of Assembly in the month of February last. While I deeply regret that it was deemed necessary, on either side, to employ the language of censure, & mutual dissatisfaction. I cannot perceive that any useful purpose would be answered by investigating more closely the merits of the controversy in which the different branches of the Legislature thus unfortunately were involved. No practical question remains to be decided, & I cannot too earnestly deprecate the revival of a discussion which must be productive of the most serious public injury without any compensatory advantage.

I have &c–

W. HUSKISSON

Copy No. 9.

REMOVAL OF JUDGE WILLIS.

Mem^r. of Dep^y. Clerk of the Crown.[1]

Trinity Term 9. Geo. 4^th. 16 June 1828.

Present The Hon^ble. M^r. Justice Sherwood.

AND

The Hon^ble M^r. Justice Willis.

Upon the Judges taking their Seats M^r. Justice Willis stated that by the Provincial Statute 34 Geo. 3. c 2 which established the Court of King's Bench in this Province, it is enacted that The Chief Justice[2] of the Province together with two Puisne Justices shall preside in the said Court that the Chief Justice being absent in his opinion two Puisne Judges could not legally constitute the Court, that therefore he sho^d. decline interfering except in such matters as he w^d. dispose of as a single Judge of the Court. Whereupon M^r. Justice Sherwood ordered the Court, to be adjourned till tomorrow at twelve o'clock against which M^r. Justice Willis protested as in his opinion there was no Court to adjourn, and thereupon withdrew when W^m. H^y. Draper was sworn a Barrister and the Court adjourned by order of M^r Justice Sherwood till tomorrow at twelve o'clock.

Ordered by M^r. Justice Willis that the Rule of this Court made in Easter Term last be rescinded so far as his authority is concerned, the same having been granted in his opinion contrary to Law. The Court not being full at the time of passing the same.

(a true Copy)

JOHN SMALL
C.E.C.

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[1] *Q. 348, pp. 248-249.*

[2] William Campbell, Chief Justice of Upper Canada, 1825-1829, had obtained leave of absence prior to the Easter Term, and was in England.

Application of Baldwin and others to Willis, June 17, 1828.[1]

May it please Your Lordship.

Copy. N° 10. The opinion delivered yesterday by His Lordship Mr. Justice Willis on the present state of the Court of King's Bench, is of such importance to the public, and so deeply involving ourselves in the discharge of our Professional duties to our Clients that it becomes indispensibly necessary to consider the matter of that opinion most maturely. Feeling that such proposed consideration, may be imperfect without also having the deliberate opinion of his Lordship Mr. Justice Sherwood, we beg leave to express our hope that we shall hear such his Lordship's opinion also.

It w[d]. be very satisfactory to us to be favor'd with written copies of these opinions, yet knowing this to be in the option of Your Lordship we trust you will excuse this part of the application, if at all unpleasant, We do not wish to trust to the hasty notes taken by ourselves or the Editors of Public Prints. We would not willingly press upon Your Lordship with any inconvenient haste but under the present circumstances time is not at our disposal and therefore trust, that if his Lordship M[r]. Justice Sherwood sh[d]. decline an early delivery of his opinion so very desirable to us, that he w[d]. be pleased to withhold his Judgment in any wherein our Clients may happen to be interested until as their Counsel we be better advised as to the course to be adopted.

(signed)
W W. BALDWIN
J. WASHBURN
ROB. BALDWIN

(a true Copy)
John Small
C.E.C.

Opinion of Solicitor General, Upper Canada.[2]

York 19th– June 1828.

Sir,

Copy. N° 7. In obedience to the commands of His Excellency the Lieutenant Governor I have the honor to report to you for His Excellency's information my Opinion upon the following Question–

Whether the Court of King's Bench in this Province can be legally holden in the absence of the Chief Justice of the Province?

M[r]. Justice Willis I am informed has publicly expressed his Opinion that the Court cannot be holden in the Absence of the Chief Justice and that all Acts done in Court in his absence will be nugatory and void. From this Opinion I entirely dissent, but having been

[1] *Q. 348, pp. 250-251.*
[2] *Q. 348, pp. 345-356.*

publicly expressed although in an extrajudicial manner I am bound to regard it as the sentiment of a Judge and therefore entitled to the most grave and serious consideration by every person who shall not be enabled to bring his mind to the same conclusion. The Court of King's Bench is constituted by an Act of the Provincial Legislature passed in the year 1794.[1] The Preamble and first enacting Clause of this Act are as follows; " For the general and *regular* administration of Justice throughout this Province be it enacted that there be constituted and established and there is hereby constituted and established a Court of Law &c. (to the end of the Clause.)

Here it is necessary to bear in mind that the Intention of the Legislature is to establish a Court of Supreme Jurisdiction and intended to fill the same space in the Judicature of Upper Canada that *all* the Superior Common Law Courts of Westminster Hall fill in England, and therefore I can hardly imagine that at a moment when a Court of such extensive Jurisdiction was about to be constituted the same Legislature could expect their enactments in relation to that object to be construed as if their Intention had been merely the creation of a Jurisdiction inferior to one already in Existence whose powers were and ought to be controuled by that Superior Court of Judicature. The Court is established by the Act and therefore the Term Court does not mean the Judges of the Court who were appointed afterwards nor the building in which it was to be holden which was not then erected but the Jurisdiction and authority which was to be exercised. The Court existed before Judges were appointed or a Building appropriated for their reception

The expression upon which all the difficulty has been raised is that His Majesty's Chief Justice of this Province together with two Puisne Justices shall preside in the said Court– In construing the Act we must take notice of the actual state of things at the time it became a Law.

At the time of the passing of this Act in July 1794 there was a Chief Justice of the Province of Upper Canada but there were not two Puisne Justices which will probably account for his being called the Chief Justice of Upper Canada instead of Chief Justice of the Court of King's Bench and for the expression " together with " used for coupling the two Puisne Judges with the Chief Justice of Upper Canada, which would otherwise more naturally have been " and " When the Puisne Judges were subsequently appointed their Commissions as well as that of the Chief Justice constituted and appointed each a Judge " with full power and authority to hold the said Court of Kings Bench at such places and times as the same might and ought to be holden within the Province– Therefore unless the Commissions of all the Judges are in this respect void each one is authorised to hold the Court in like manner as any Judge of the Superior

[1]Amended by 2 Geo. IV, cap. 1 (second Session).

Courts of Record may do in England– The King by his Prerogative might unquestionably have established a Common Law Court and appointed his Judges without any Act of the Legislature but the Legislature having established a Court the question is whether the King has by his Commission contravened the Intention of the Legislature, of which he was a part, by the manner of his appointing the Judges and I think he has not. The act does not say they shall *collectively* preside at the same time and in the same place, it says that the Chief Justice with two Puisne Judges shall preside which they may do separately. They each and all of them preside when they superintend the business and regulate the practice of the Court at their Chambers, as well as in Court, that is they watch over, manage and direct, the proceedings of the Court, which I apprehend to be the meaning of the word preside as it is used in this Act and they can frequently be more usefully employed separately than together, the propriety of such course they as Judges of a Court of Supreme Jurisdiction must necessarily have discretion given them to determine.

Their Presidency is not limited to place, but another term is used when the locality of Court is spoken of namely "holden"– Three Judges shall preside in the said Court which Court shall be holden in a "place certain". If the Act had meant that they could only preside in the "place certain" it would have been so expressed and the words "which Court shall be holden" would naturally have been omitted– then the Act would have read thus "And that His Majesty's Chief Justice together with two Puisne Judges shall preside in the said Court in a place certain" but this is not the language of the Act which does not in my opinion limit the Superintendance of the Judges to the place certain where the Court is to be holden consequently the word preside cannot be made to mean sit together in the place certain to discharge their functions, which would deprive the Judges of the powers and authorities incident to the Judges of the Superior Courts in England and would deprive them of the means of proceeding by such course as "shall tend with Justice and despatch to determine" the Actions Causes or suits instituted before them. If the act is to be construed with that degree of rigidity, to the letter, which would be adopted, in expounding an Act establishing a new Court of Summary Jurisdiction the Court is deprived of the extensive powers evidently intended to be conferred upon it. How could a single Judge in Chambers make an Order if two in Court cannot? The whole of the Chamber business of a Judge of a Superior Court would necessarily vanish and the whole business of the Court would necessarily be confined to the four Terms of sitting to the manifest injustice and delay of Suitors instead of Justice and Despatch. In contemplation of the Law of England the whole term is but one day and what is done during term has no relation to the first day of term but should this new reading of the law be correct, this Idea must be exploded and parties

might require the names of all the Judges to be entered on the Record as present at every step of the cause and their absence alleged as error– So all proceedings in vacation have relation to the last day of term when the Act Contemplates the occasioned absence of the Chief Justice All Judgements notwithstanding they are entered by the Clerk are in contemplation of Law severally pronounced by the Court and therefore if a Judgement is entered in vacation it might be alleged for error that the Chief Justice was not present on the last day of Term when the Judgement was given, although the Law contemplates his occasional absence on that day, when it authorises Writs issued in his *absence* to be tested by the Senior Puisne Judge– Again continuances are entered on the Record to the last day of the Issuable Term invariably, and yet if the Chief Justice were absent and no Court could on that account be holden the cause would abate So would the Death or absence even of sickness of any Judge on any return day, if no Court could be held without the three, cause the writs then returnable to abate The Writs require the parties to appear on such a Day before the Justices which in contemplation of Law they do personally or by Attorney in open Court, although in fact their appearance is recorded by the Office of the Court upon a Precipe to that effect filed in the Office of the Clerk therefore if no Court can be held, without the three Judges it is manifest the Defendant in such case could not appear in Court and therefore the writ would abate, Such a state of things would produce anything but a "*regular* Administration of Justice" and the Delay and consequent Injustice thereby produced would be intolerable. Every time a Judge was sick and unable to attend in Court numerous discontinuances would be the consequence to the great ruin of the Suitors.

I apprehend it matters not how this Court is established whether by Common or Statute Law so long as its authority is unlimited as [sic] the Provisions of its Constitutions not violated in endeavouring to carry those provisions into effect– Cessante Ratione cessat et Lex– The reason why Courts erected by Act of Parliament in England are to be confined strictly within the letter of their Constitution is that every new Court infringes and encroached upon the Jurisdiction of some other Court already in Existence of which all Courts are jealous and also in many Cases these new Jurisdictions tend to abridge the liberty of the subject.

These reasons cannot be urged here and therefore this Act having for its object the creation of a Court of Superior Jurisdiction in a Colony previously possessing no efficient tribunal at all should be construed liberally without which construction the Intention of the Legislature never can be attained and not strictly by which latter the Intention will be effectually frustrated.

In the Instances put by M^{r}. Justice Willis in illustration of his argument the authority is differently conferred and for a different

purpose– In the case of writs of Error in the Exchequer Chamber the Court is not substantively appointed to hear errors and there certain persons designated to preside, but certain persons are required to hear and determine Errors in a certain place, and consequently the particular individuals named must attend, the Duty being personal and not vested in a Court possessing a given Jurisdiction; but in the case strongly relied upon by M^{r}. Justice Willis and to which he desires to draw particular attention namely the Court of Exchequer Chambers created by Act 31 Ed. 3 Ch. 12. which directs that the Chancellor and Treasurer (the latter is not now required) shall cause to come before them in any Chamber-of Council, nigh the Exchequer the Record &c. taking to them *the* Justices and other sage persons and thereupon duly examine &c. I find it to be the practice for the Chief Justice of King's Bench and the Chief Justice of C.B to hear these Errors argued alone Sec: 1st T.R. 511 which is much stronger than the present case. These two Judges heard a cause previously decided by a Court composed of four Judges and upon their Judgment the former one was reversed. This being a Court of Appeal might be a strong reason for requiring *the* Justices which means *all the* Judges of King's Bench and Common Pleas with the Chancellor and Treasurer to hear appeals from Superior Courts, and yet the Chief Justice of each Court are [sic] now considered sufficient to hear the cause and to answer the Exigency of the Statute which is any thing but a strict construction. But I am of opinion that the fair reasonable and natural construction of the Law is in favor of one or two Judges holding the Court and so the Legislature have frequently shewn by their enactments. In the year 1803 nine years after the passing the Act establishing the Court of King's Bench and during which period the Chief [sic] of the Province had been absent, more than once for a long interval and during which period also two Judges had usually sat and transacted the business of the Court. An Act to enable married Women having real Estate more conveniently to alien and convey the same was passed: in the third Clause whereof it is provided that a certain Certificate therein required to be given for an examination of such married women in *open Court* "shall be signed by the Chief Justice or *in his absence* by the Senior Puisne Judge of the said Court", expressly recognizing the sitting of the Court without the Chief Justice. By the last King's Bench Act passed in 1822 the sitting of the Court is always contemplated when he is not giving a personal attendance in Court– By the 6th– Clause privileged persons (of whom the Chief Justice is the principal) are authorized to proceed by Bill in the Court of King's Bench but no person can sit in Judgment in his own Cause therefore unless a Court can be holden without the Chief Justice he can neither sue nor be sued in the Colony; the Puisne Judges would be of course in the same predicament, At common Law when there are divers Judges of a Court of Record the act of any One of them is effectual, especially

if their Commission do not *expressly* require more. 2 Haw. P.C. Ch. 1. Sec. 10. This is recognized in Bac. Ab^{t}. as good law. And although it has been said that the Act of the Provincial Legislature must be taken as part of the Commission and therefore the Act saying all shall preside the Commissions are so far void yet as the Act does not *expressly* require them all to act *jointly together* the Common Law and the King's Prerogative shall not be abridged without express words to that effect. In truth the other construction is in contravention of the Act which says that "the Court shall possess all such powers and authorities as by the Law of England are incident to a Superior Court of Civil and Criminal Jurisdiction" and it is a most important incident to all such Courts in England that each of the Judges shall have power to hold the Court. There is no quorum in these Courts, one Acting in Court in the name of the whole is effectual.

If such a confined construction is to be given to the act establishing the Court of King's Bench because it creates a new Court and is to be strictly construed the same rule will apply to the 31st of the late King, constituting the Provincial Legislature and then what power has either the Legislative Council or House of Assembly to appoint a quorum consisting of a part only of the Members constituting each body.

Perhaps, however instead of looking at this as a Question open for discussion, the more correct mode of treating it would be, to regard it as judicially determined, which it most unquestionably has been, but the uniform practice of all the Judges who ever sat in the Court from its creation, which, if the words admitted of ever so strong an Interpretation the other way, would, until their Judgments were appealed from to a higher tribunal and reversed on that ground, be binding on all Judges of the same Court at the present day.

I am therefore clearly of Opinion that the Court of King's Bench may legally be holden by One or both of the Puisne Judges in the absence of the Chief Justice.

I have the honor to be Sir

Your most obedient humble Serv^{t}.

signed H. J. BOULTON

Sol^{r}. Gen^{l}.

To

Major Hillier
Private Secretary to His
Excellency the Lieut. Governor.

A True Copy
John Small
C.E.C.

Report of Executive Council, 27 June 1828.[1]

May it please Your Excellency.

The Council having considered Your Excellency's reference of the 18th Instant with the accompanying documents, respecting the Circumstances which have lately occurred in relation to His Majesty's Court of King's Bench for this Province and requesting any Suggestions the Board might have to offer, with a view to remedy the inconvenience that may accrue to the Public as well with regard to the present Term as to the approaching Circuits

Most Respectfully Report as follows

Reference & N° 2. It appears that the Honorable Mr. Justice Willis (who was Sworn in as a Puisne Judge of the said Court on the 11th October last) recently inclosed to Your Excellency's Private Secretary two unsealed Letters addressed respectively to His Majesty's Principal Secretary of State for the Colonies and Mr. Stephen the Counsel for the Colonial Department, with a request "that they might be officially forwarded"– These Letters were by Your Excellency's Commands returned to Mr. N° 3. Willis unopened, Your Excellency "not having been made aware that they related to any Public matter connected with the Government, or to any subject of which it was necessary Your Excellency should be apprized"– Mr. Willis in answer requested them to be laid before N° 4. Your Excellency as "relating to the Public business in his opinion of the greatest consequence to the Colony– attributing his not having done so in the first instance to "a want of acquaintance with Official forms" not from any disrespect to Your Excellency– And in the "presumption that they would not have been forwarded should any part have met with disapprobation–"

N° 5. Mr. Willis was informed that his Communications would be transmitted, and at the same time it was intimated to him that should those Circumstances occur to which he had called the attention, not of this Government, but of the Secretary of State, it would remain for Your Excellency to pursue such course as they might seem to require: N° 6. in reply to which his words were that he "unequivocally declared or rather repeated" that by the Course he had taken his object was to call Your Excellency's attention to the whole Contents of his correspondence–

N° 7. On the 17th Instant Mr Willis, adverting to his former Communications, Stated that he had in the Court House the day previously, publicly declared his Sentiments respecting the Constitution of the Court, in recalling so far as he was concerned in it, an Order made without the aid of the Chief Justice of the Province– and requested that Your Excellency might be informed that in his Judgment the said Court as established by the Provincial Legislature could not, without an express violation of the Statute, be held unless the Chief Justice together with the two Puisne Justices, should preside therein– adding

[1] *Upper Canada, State Book H., pp. 513-528.*

however that " he awaited Your Excellency's Commands on the Subject– and that in the mean time he was most desirous to discharge such duties as he could legally perform "–

N° 8 On the same day he inclosed to Your Excellency to be transmitted to the Secretary of State for the Colonies when perused, a Copy of the Opinion he had delivered the day before, and begged to call Your Excellency's attention not only to that part of it relating to the establishment of the Court– but also to the British Statutes to which he had referred respecting *leave of absence*– And to the consequences (had they not been complied with) so far as they might affect the present State of the Court of King's Bench, and the General Administration of Justice in the Colony– He likewise, for the same purpose,

N° 9. transmitted a Minute of the proceedings on the first day of Term furnished by the Deputy Clerk of the Crown– as also a Copy of an

N° 10. application from three Members of the Bar soliciting the deliberate opinion of M^r^ Justice Sherwood on the subject in question, and a transcript of that delivered by M^r^. Willis– With the latter he expressed his intention to comply–

N° 1. M^r^ Justice Sherwood the Senior Puisne Judge who presided in Court on the first day of the Term (16^th^. Instant) reports to Your Excellency, that on that morning he repaired to the Judges Room in the Court House at the usual hour for the purpose of holding the present Term of Trinity in the Court of King's Bench– that M^r^. Willis was in the Room robed in the costume of a Judge– that they entered the Court Room attended by the Sherriff in the usual manner, when the Court was opened– after which M^r^. Willis stood up and addressed the Audience in a public manner, standing all the while like a Counsel at the Bar– that he stated at great length his Opinion that the Court could not be held without the presence of the Chief Justice and two Puisné Judges– that all heretofore done by two Judges was Null and Void– that upon examination at the Council Office he found the Chief Justice was absent from the Province without leave of the Governor and Council, and consequently had forfeited his Office under the British Statute of 1814; that after ending his elaborate address he declared his intention to retire from the Bench when M^r^. Sherwood informed the Bar he should continue in Court and transact such business as the established practice allowed to be done by a single Judge– That M^r^. Willis Still standing up publicly protested against his doing any business in Court, or Adjourning the Court to any other day, and after loudly repeating his Protest twice, retired from the Bench– that M^r^. Sherwood then Adjourned till the next day, and that he intended to proceed with the public business during the Term unless any directions from Your Excellency should change that intention.

In the opinion delivered by M^r^. Justice Willis he insists upon two principal points– namely–

1st That under the Provisions of the 1st. Sect. of the Prov: Stat: 34. Geo. 3d. C. 2. the Court of King's Bench cannot be legally holden without the actual presence of the Chief Justice and two Puisné Justices– and that consequently all Courts heretofore composed of a less number of Judges were illegal and their proceedings void–

2ndly That under the Provisions of the British Statutes 22. Geo. 3rd. C. 75. and 54 Geo. 3rd. C. 61.[1] leave of absence cannot be granted to any Officer of the Government by the Governor alone, it being competent to the Governor *and* Council only so to do– and that if any Officer shall have absented himself from the Province without leave obtained according to the Statutes (so explained,) he must be deemed thereby to have vacated his Office, and his appointment must be considered to all intents and purposes Null and Void–

Before entering upon the first point the Council deem it proper to turn their attention to the very important Subject of leave of Absence.

N° 11 & 12. Upon this head Your Excellency has been pleased to lay before the Board the Opinions of the Law Officers of the Crown, after whose Satisfactory Report they forbear considering at length the soundness of the arguments adopted by Mr Justice Willis–

Upon the Question of leave generally however it may not be improper to remark, that By the 7. Sec. of the Royal Instructions to His Excellency the Governor in Chief bearing date the 26th March 1816. two Years after the passing of the Imperial Act 54. Geo. 3d. C. 65.[2] it is declared that " if any Members of the Executive Council residing in
N° 13. the Province shall wilfully absent themselves for the space of *Six Months* without leave from His Excellency or for One Year without leave from His Majesty, their places shall become void; and

N° 14. In Mr. Huskisson's Circular of the 30th January last upon the same Subject– he speaks throughout of the leave obtained in the Colonies as being granted by the head of the Government; and, without doubting his own power to extend Such leave– he requires applications for that purpose to be accompanied by the written authority of the Governor– or to be made before the expiration of the first leave, at a period sufficiently early, to enable the Secretary of State to obtain the opinion of the Governor before he complies with the request–

It is likewise to be remarked that in this Province, and the Council believe in other Colonies, leave of absence has usually, if not at all times been granted by the Governor alone in his discretion– and that such leave so far from being disallowed as illegal or irregular has been not only sanctioned but frequently extended by His Majesty's Government–

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[1]These two acts forbade the granting of Patent Offices in the colonies to absentees and regulated the granting of leave of absence.

[2]Really cap. 61.

Independent however of this question in the abstract the extra-judicial character of M^r^. Justice Willis's Opinion has not failed to attract Notice.

It appears that a few weeks ago without the Sanction of Your Excellency he took upon himself to visit the Executive Council Office, One of the most Confidential belonging to this Government, and there inquired from M^r^ Lee, the Junior Clerk, " whether when the Judges made application to go Home it was communicated to the Council "– who replied that he never saw any such Communication entered in the Council Books– but thought applications for leave of Absence were made to the Lieutenant Governor–

Upon this answer so obtained, and which it may be doubted whether a Court of Justice could have exacted– he, uncalled upon by any Judicial proceeding gratuitously passed his Judgment upon the validity of many Commissions to Patent Officers of the Colony– every one of which thus prejudged might by possibility hereafter be brought before him on Scire facias for regular adjudication.

It is not competent to a Judge to Notice Judicially any facts unless admitted by the nature of the pleadings before him– or ascertained by the Verdict of a Jury– And the assumption of an Inquisitorial authority– Sought to be exercised in the present instance, the Council consider incompatible with the good order and Security of the Government– They find nothing in the discussion of a similar topic by the Attorney General in another Colony in his political capacity as a Member of Assembly to call for or warrant its attempted adjudication by a Judge of this Province in his Judicial Capacity as a Member of the Court of King's Bench–

Adverting to that part of the Opinion delivered by M^r^. Justice Willis which respects the legality of holding the Court of King's Bench in the absence of the Chief Justice it appears upon Examination that previous to the division of the late Province of Quebec into Upper and Lower Canada Courts of Civil and Criminal Judicature were established therein by the Ordinances 17. Geo. 3, C. 1 and 5. passed by the Governor and Council exercising a Legislative authority in that Province; and that at the time of the division of the Province of Canada by virtue of the Imperial Act 31. Geo. 3. C. 31. that part now composing Upper Canada was divided into four Districts– namely– Lunenburgh– Mecklenburgh– Nassau and Hesse– in each of which was established a Court of Common Pleas, the duties whereof were discharged by several Judges generally Selected from Gentlemen of the first character and qualifications resident in the District wherein they officiated– At least in all except the Westermost District (Hesse) wherein those nominated in the first instance having declined to Act the Honorable William Dummer Powell, late Chief Justice of this Province, first Judge in that District performed the Judicial functions alone–

In July 1792 after the division of the Province the late William Osgoode was by the late Lieutenant Governor Simcoe appointed under the Great Seal of Upper Canada "Chief Justice of and in the Province of Upper Canada in America–" during pleasure and his residence in the said Province– "with full power and authority *to hold the Supreme Courts of Judicature* at such places and times as the same might and ought to be held within the said Province"–

On the 9th July 1794 (Mr. Osgoode then being Chief Justice of this Province) the Prov: Stat: 34. Geo. 3. C. 2. was passed for establishing a Supreme Court of Civil and Criminal Jurisdiction and to regulate the Court of Appeal–

The 1st. Sec: enacts "that there be constituted and established and there is hereby constituted and established a Court of Law to be called and known by the name and style of His Majesty's Court of King's Bench, for the Province of Upper Canada, which shall be a Court of Record of Original Jurisdiction, and shall possess all such powers and authorities as by the Law of England are incident to a Superior Court of Civil and Criminal Jurisdiction, and may and shall hold plea in all and all manner of Actions, Causes or Suits, as well Criminal as Civil, real personal and mixed, arising, happening or being within the said Province, and may and shall proceed in such Actions, Causes or Suits, by such process and course as shall tend with justice and despatch, to determine the Same, and may and shall hear and determine all issues of law, and shall also hear, and by and with an inquest of good and lawful men, determine all issues of fact that may be joined in any such Action, Cause or Suit as aforesaid, and judgment thereon give, and execution thereof award, in as full and ample a manner as can or may be done, in His Majesty's Courts of King's Bench, Common Bench, or in matters which regard the King's Revenue by the Court of Exchequer in England. And *that His Majesty's Chief Justice of this Province, together with two Puisne Justices, shall preside in the said Court,* which Court shall be holden in a place certain, that is, in the City, Town or Place where the Governor or Lieutenant Governor shall usually reside; and until such Place be fixed, the said Court shall be holden at the last place of meeting of the Legislative Council and Assembly"–

Sec. 2. Provision was then made for the Sitting of this Court and four
Sec: 5. 6. &c. "*Sessions* or *Terms* were appointed in each year– in which each alter-
Sec. 3. nate day was to be a return day– the practice and course of proceeding
Sec. 4. was in various respects established– Adjournments from one return
Sec: 9. day to the next immediate return day were sanctioned– All Writs were directed to be tested in the Name of the Chief Justice– *Or in his absence* by the Senior Puisne Judge– All Issues joined in the said Court triable in the Home District of the District in which the Court was holden, to be tried by the Chief Justice *or in his absence* by any other
Sec. 26 & 27. Judge *either in Term time* or within ten days thereafter– The Justices

of said Court or any two of them, whereof the Chief Justice to be one, were authorized to appoint Commissioners for taking Bail and
Sec: 30. Administering Affidavits in the said Court– The Courts of Common
Sec. 31. Pleas were abolished and provision made for Actions pending therein,
Sec: 33. and the Governor or Chief Justice of the Province together with two or more Members of the Executive Council were constituted a Court of Appeal.

Sec: 36. Provision was likewise made for holding the said Court at the Seat of Government and for removing the same in time of Actual war– This Act has from time to time, been altered and amended– and other Provincial Statutes refer to the Court and its Judges– but as
N° 15 & 16. the elaborate opinions of the Attorney General and Solicitor General, in which the subject is copiously and ably discussed, refer to them in common with the various legal authorities bearing upon the question the Council deem repetition unnecessary and Superfluous–

Upon the same day that the Provincial Statute 34. Geo. 3. C. 2. was passed the Honorable William Dummer Powell (until that time a Judge of the Common Pleas) was appointed a Puisne Judge " of the
N° 17. said *Court of King's Bench* during pleasure and his residence within the Province *with full power and authority to hold the said Court of King's Bench* at such places and times as the same might and ought to be held "– His Commission bears date at Niagara then the Seat of the Provincial Government– In 1797 the Seat of Government was removed to York where it has ever since continued–

The late Chief Justice Osgoode framed this Statute and being by the Act authorized to preside in the Court as " His Majesty's Chief Justice of the Province " appointed to " hold the Supreme Courts of Judicature," it does not appear that any new Commission was deemed necessary for him– The circumstance of his being Chief *Justice* of the *Province* commissioned to hold the Supreme Courts of Judicature– not any particular Court by name, at the passing the Statute above recited may seem to explain that part of the first Section which provides, not that *a* Chief Justice with two Puisne Justices, but that His Majesty's Chief Justice of the Province (alluding to an Office already created of which M[r]. Osgoode was the Incumbent) Should Preside, together with two Puisne Judges– not that the three should Preside but that the Chief Justice of the Province with the two others should form the Establishment of the Court– in which the Chief Justice was to preside– as the Chief Justice uniformly presides in other Courts, consisting of two or more Judges of which he is head– he presides over the Court at all times but not being always present cannot personally preside at every sitting of the Court–

N° 18. In November 1794 by a Commission under the Great Seal tested in the Name of the late Lieutenant Governor Simcoe, reciting that " the Bench was empty by the removal of the late Chief Justice and that a Second Puisne Judge had not as yet been appointed– the late

Mr. Russel was authorized to Sit in His Majesty's Bench with the Honorable William Dummer Powell at all times when his presence should be necessary during the Term of Easter then next"–

Mr. Powell was the only Judge of the Court named in the Commission of Oyer and Terminer and General Gaol Delivery and of Assize and Nisi Prius, in the Years 1795 and 6. And Mr Russell was on various occasions appointed in the terms above mentioned a temporary Judge of the Court–.

In November 1796, the late John Elmsley (who succeeded Mr. Osgoode) was appointed Chief Justice of the Province in words similar to those used in the Commission to Mr. Osgoode– not Chief Justice of the Court of King's Bench but "of the Province of Upper Canada"–

In 1797 Mr. Russell was several times appointed "to sit on the Bench" with the last named Chief Justice by reason of the absence of Mr Justice Powell– each Commission limiting the appointment to the next Succeeding Term– but in the Commissions dated respectively
N° 19. in December 1797 and March 1798 a deviation in the form took place– In these is recited that part of the Provincial Statute which enacts "that the Chief Justice together with two Puisne Judges shall preside in the said Court, and that the vacant Seat of Second Puisne Judge had not been filled" Wherefore he is appointed "to fill such vacant Seat for the next ensuing Term"–

In 1798 the late Henry Alleock was appointed to fill the place of Second Puisne Judge– and now for the first time was the Bench full–

Since the latter period various appointments have taken place both in the Office of Chief Justice and of Puisne Judge, of which a Schedule is herewith respectfully Submitted–

Upon Comparing the Commissions– it appears that all those to the Chief Justice follow the terms of Mr Osgoode's in 1792, and that all issued to Puisne Judges are similar to the one granted to Mr. Powell in 1794– on his– the first appointment to the Court of King's Bench–

N° 20. The Return from the Office of the Clerk of the Crown and Pleas exhibits the state of the Court as respects the Judges present during each Term from its formation to the present day– And it establishes the facts that out of 135 Terms– 56 only have been held by the Chief Justice and two Puisne Judges.

That 59 Terms have been held by a Chief Justice and one Puisne Judge That 15 have been held by two Puisne Judges and 5 by One Puisne Judge–

So that it may be inferred from the immediate appointment of Mr. Justice Powell as a Puisne Judge without any Associate with the Knowledge of the learned Individual at that time Chief Justice of the Province under whose Superintendence the Bill was prepared and the Court organized– and from the practice ever since prevailing– that independent of other Construction or Authority– the Constant presence

of three Judges was not Contemplated– altho' the appointment of that number was provided for–

The Council have carefully perused the Opinion submitted by M^{r} Justice Willis, as well as those of the Attorney and Solicitor General– And tho' upon a question purely legal they conceive themselves warranted in acting under the Reports of the Law Officers of the Crown without attempting the discussion of technical points with which they cannot be supposed to be familiar, Yet on the present occasion they think it proper to declare that after the best Consideration they have been enabled to give the matter– they not only concur in the Opinions expressed by the Crown Officers, but find them sustained by the practice of every Judge who has hitherto held Office in Upper Canada– And by the positive declaration of M^{r}. Powell in a Communication dated 10th. August 1809–

N° 21.

Viewing the subject in this light, and referring to the Accompanying legal Opinions for its full elucidation the Board proceed to consider the embarrassment occasioned by the Steps publicly taken by M^{r}. Justice Willis.

They readily admit that unless corrupt Conduct can be imputed to a Judge in the legitimate discharge of his Official duties– the independence of the Bench as well as the interests of the Government and the Community require that he should not be Amenable to Account for the Opinions he may form, or the Judgments he may Pronounce–

Without therefore attaching any blame to M^{r}. Willis for exercising his Judgment as to the construction of the King's Bench Act, the Council nevertheless dissent from the manner in which he made public that extrajudicial Opinion, upon a question of the greatest moment– never before agitated.

The Council consider it not only extrajudicial but exceedingly indiscreet, as tending to disturb a practice of 30 Years under the sanction of all the learned Judges hitherto appointed to the Court; as calculated to excite public alarm, and to create distrust in the Constitutional authority of the tribunals of Justice–

The decision of a Single Judge could not Set at rest the question even in the King's Bench itself– and the course adopted obviously tends to Procrastinate the business of the Court– to delay and perplex Suitors and to check the due administration of the Law as hitherto enjoyed– without affording any opportunity of appeal to a higher Jurisdiction–

As a Judge of the Court and as a Public Servant of the Crown, his duty was to communicate his Opinion to the Government of the Colony in order that if found just, measures might be adopted to obviate the difficulties that would otherwise follow– and in the mean time unless called upon to deliver a Judicial Opinion by some plea to the Jurisdiction– things Should have been Suffered to continue in their usual Course–

The following serious evils must arise from the Secession of Mr. Willis from the Bench unless a timely remedy be provided.

1st The obstruction experienced during the present Term in all the important business of the Court.–

2nd The want of Courts of Assize and Nisi Prius– As the Circuits uniformly take place in the Summer Season, and once only within the year, a delay most injurious to the public, must attend their threatened interruption

3rdly The want of an efficient Court in Michaelmas Term which will commence on the 3rd of November next–

For should Mr. Justice Willis even deem it competent to him to Act as Judge of Assize and to try Nisi Prius Records passed in the absence of the Chief Justice, yet it may be questioned whether consequences worse than a total suspension of Civil business might not be apprehended– It cannot be expected that a number of Judges sufficient to hold a Court in his Construction of the Law will be present in the Province in Michaelmas Term– and as he of course would not otherwise attend himself– nor recognize its legality if assembled without the presence of the Chief Justice– it is not probable he would when required, report the particulars of any Cases tried before him on the Circuit– and as various points of law would demand the consideration of the Court upon Motions for New trials– Points reserved and the like during that Term– the obvious prejudice to which the rights and interests of Suitors must be exposed need not be pointed out.

With a view to remove these embarrassments the expediency of the temporary appointment of an additional Judge suggested itself to
N° 22. the Council, but the Crown Officers, in their report upon Lord Bathurst's Despatch of the 9th April 1827 referred to them by His Lordship's direction, express much doubt as to the Prerogative right to increase the Present establishment without the Sanction of a Legislative provision, and they advise that under such doubts it would be inexpedient to Act without that authority–

The attention of the Council was next turned to the consideration, whether a suspension of Mr. Justice Willis, until His Majesty's pleasure should be made known, would enable Your Excellency to prevent the inconveniences which must result from the want of the usual practical administration of the law– This inquiry led to the conclusion, that as no actual vacancy would be produced by such a measure, Your Excellency would still be precluded from affording the desired relief–

Thus Circumstanced, the only remaining alternative necessarily became the subject of most anxious deliberation–

N° 23. The Council were aware that the Colonial Offices are held during pleasure– And they had been advised of the power of this Government to remove a Judge of the King's Bench upon grounds justifying the measure– But while they themselves felt the utmost reluctance to propose such a course, unless driven to it by extreme emergency, they

were also well assured that it would always be more satisfactory to Your Excellency and less liable to exception by the parties implicated, that the exercise of such discretion should be suffered to rest with His Majesty's Government.

They did not fail to consider, that in England, so long ago as the 13. W. 3.[1] it was enacted that the Judges of the Superior Courts in that Country should hold their Commissions, not as formerly, during pleasure, but during good behaviour, removable however upon the address of both Houses of Parliament and that by the 1. Geo. 3. C. 23. they are continued in Office notwithstanding the demise of the Crown– Nor were they unmindful that his late Majesty had been pleased to declare that " he looked upon the uprightness and independence of the Judges as essential to the impartial Administration of Justice– as One of the best Securities of the rights and liberties of His Subjects, and as most conducive to the honor of the Crown "–

In accordance with these principles the Council were strongly impelled to submit to Your Excellency that it would be desirable, as far as possible, to make them practically applicable to those high Offices here referring it to His Majesty's pleasure to determine when the public welfare should render a removal necessary–

But these Sentiments were met by the conviction that there would not be time to receive an answer to any such reference before the approaching Circuits– And that in the mean while the Public, having most extensive interests involved, would look with confidence to Your Excellency's wisdom to prevent the course of legal Administration, which has existed for so long a period, from being unnecessary [sic] interrupted–

With the Sincerest desire therefore of Avoiding the immediate removal of M[r]. Willis and of still maintaining the beneficial operation of the laws– The Council on the 25[th] Inst. addressed to him a letter, in which referring to that passage of his Note of the 17[th]. Inst. where he
N° 24. stated " that he was and always should be most desirous to discharge Such of the duties as under existing Circumstances he could legally perform ", and intimating to him that " the Government had ever been of opinion the Court of King's Bench had been legally held, and the duties of the Judges well understood "– the Board requested any explanation " he might be pleased to offer respecting the duties he Contemplated as well with regard to the Terms and Chamber business as to the Circuit Courts including the trial of all Records emanating from the King's Bench, whether containing pleadings of the present or any preceeding Term, and whether passed before or Since the departure of the Chief Justice "– The latter clause was inserted because a great number of the Civil Cases on the Circuits are conducted to issue in Trinity Term, and the Records are generally passed in the following vacation, on the eve of the Assizes– at which Courts if a Judge were to decline trying them, the most serious inconvenience

[1] 12 & 13 William III. Cap. 2

N° 25. and expense would accrue to some hundreds of persons–

In answer Mr Justice Willis said "That he should have much pleasure in affording the *utmost explanation* in his power on the very important topics referred to by the Council at as early a period as the magnitude of the inquiry should permit"–

The urgency of the Case called for a more certain and definite reply, and to remove all doubt as to the true object of the Board,

N° 26. Another Note was addressed to Mr. Willis stating "the desire of the Council to receive an explicit declaration as to which, if any, of the duties enumerated in the previous communication he was prepared to

N° 27. discharge, and that the public Service required his early answer"–

In reply he said "he felt legally judicially and religiously bound by virtue of his Oath of Office, to declare his opinion of the 16th. Inst. in rescinding so far as he was concerned an Order of Court he had joined in and expressing what he considered the result of his Judgments" That "all or every of the *Several duties permitted* by the Legislative enactments of this Province to be discharged by One Judge, or in Conjunction with the Chief Justice, he should always be

See Note 129 Co: L. 110a. ready to perform"– That "the precise nature of those duties if questioned he could only give an opinion upon Judicially when legally before him"– And after citing the Case of Ship Money, and quoting Some passages from a Note to Lord Coke's Commentary upon Littleton on the subject of the King's Consulting his Judges in cases in which the Crown is materially interested, and of such Judges delivering extrajudicial opinions– he submitted whether he could be legally requested to give any such by the Executive Council, adding that "whatever his private wish might be, respect must be had to his Oath and the established and Constitutional law"–

The Council are quite at a loss to conceive how Mr. Justice Willis could have misunderstood their plain and obvious meaning– No extrajudicial opinion was solicited, he was in the first place merely asked to explain a passage in his own letter– and to prevent any misconceptions the King's Bench Terms– the Chamber business– and the Circuit Courts were separately enumerated; Afterwards when it was feared he had not comprehended the object of the Board a more "explicit declaration was desired." Knowing as the Council did that Mr. Justice Willis had, three weeks before it was pronounced, made a voluntary communication of his Opinion to His Majesty's Secretary of State for the Colonies, and to Mr. Stephen the Counsel for the Colonial Department, it was not unreasonable to expect that he would have been both prepared and willing to give them any information on the subject which the public Service might require– And the Council cannot forbear contrasting the present caution of Mr. Willis on this head, not only with his previous communications– but also with that part of his opinion which he represents to have been Judicially delivered on the 16th. Instant relative to *leave of absence* and his

inquiries at the Council Office– The Board have Searched in vain for any proof that this subject was " Judicially or legally before him "–

Without any satisfactory answer to their enquiries, the Council are left to interpret for themselves the Opinion of Mr. Willis as respects his individual share of the public business, and connecting it with his formal protest and departure from the Court– they are constrained to infer that under his construction of the law, he cannot during the absence of the Chief Justice be expected effectually to discharge the duties of a Judge Commissioned to hold the Court of King's Bench in this Province–

Thus situated– And deeply impressed with the imperative necessity of immediately Supplying an efficient Court in order to ensure the due and regular Administration of Justice in the Country, the Council, in the Sincere desire to discharge their duty to His Majesty's Government– to this Province– and to Your Excellency, and relying upon the ultimate Sanction of His Majesty– feel it a duty incumbent upon them to recommend that Mr. Willis be forthwith removed from the Office of one of the Justices of His Majesty's Court of King's Bench for the Province of Upper Canada until His Majesty's pleasure be Known– And that in the mean time the Vacancy thereby occasioned be supplied by a temporary appointment in the wisdom of Your Excellency

All which is most respectfully submitted–

Signed, J. BABY,
Presiding Councillor–

Signed, P.M.

Murray to Maitland.[1]

Downing Street

No. 4.

18 July 1828

Sir

I have had the honor to receive your dispatch of the 7th of June, with it's enclosures, relative to the objections made by Mr. Willis to the competency of the Court of King's Bench of Upper Canada to hold sittings *in Banc* in the absence of the Chief Justice.

As Mr. Willis is himself one of the two resident Judges of the Court, his opinion respecting the incompetency of that Tribunal will of course be practically decisive of the question If he declines to act, I presume it may be taken for granted, that the Judicial proceedings of the Province must be suspended, & cannot be carried on by his Colleague alone.

Availing myself of such means of ascertaining the state of the Law upon the subject as the exigency of the moment will permit me to con-

[1]*G. 64, pp. 23-32.*

sult, I should conclude that Mr. Willis is mistaken in his interpretation of the Law. But you will understand me as not undertaking to express any decided opinion upon that question. I must, of course, entirely disclaim any right to review the judgments of a competent legal Tribunal. If I possessed such a right, it would be premature to exercise it at present, since the decision of the Court respecting its own competency still remains to be pronounced

If unfortunately the Judges should adopt the opinion entertained by Mr. Willis, Your Excellency will immediately issue to Mr. Robinson, the Attorney General of Upper Canada, a Commission under the Public Seal of the Province, to be Chief Justice, or if Mr. Robinson should decline the Office, you will issue such a Commission in favor of Mr Boulton the Solicitor General, or of any other Gentleman of the Bar whom you may deem more competent. But in no event must such a Commission be issued in favor of Mr. Willis.

If this measure of appointing a Chief Justice should unfortunately become necessary, it must be distinctly understood that though the Commission will be in the usual form, it will be issued only to meet the existing emergency, and that on Mr. Campbell's return to the Province the appointment now to be made will oppose no obstacle to his resumption of his Office. I must entirely place in your Excellency's hands, the task of making such pecuniary arrangements with Mr. Robinson as may be necessary for protecting his interest and that of Mr. Campbell. I am so well assured of Mr. Robinson's zeal for the public Service, that under the peculiar difficulties of the case, I do not hesitate to direct an application being made to him, which may perhaps involve him in considerable inconvenience, if not in some temporary loss of income. Your Excellency will put that Gentleman in full possession of all the circumstances out of which this dilemma has arisen, and avail yourself of his professional assistance in surmounting any technical difficulties which may seem to obstruct the execution of these instructions. Amongst these, the most considerable may perhaps be the unavoidable want of a Warrant under the Sign Manual for issuing the proposed Commission. But I am led to believe that the validity of the Commission itself when issued will not be affected by it.

It is with very great regret that I have noticed the course of conduct adopted by Mr. Willis on this occasion. The high and important Office which he has the honor to hold, renders it peculiarly obligatory on him to promote the tranquil administration of the Colonial Government. Giving him credit, as I am bound to do, for perfect sincerity in the opinion he maintains, it was his duty to have communicated that opinion to Your Excellency, with a full explanation of his reasons in a confidential manner, in order that you might have the most ample opportunity of considering the best means of providing against the dangers to which such a construction of the Law inevitably tended.

Instead of this, Mr Willis thought proper to address his communication not to Your Excellency, nor even to the Secretary of State, but to a Gentleman resident in England, who has no connection with the Government here, except as a legal Adviser upon such questions as are occasionally referred to him. That Gentleman has assured me that he has never encouraged Mr. Willis to make any communication of this nature to him, and has expressed his regret that his name should have been used in connection with a proceeding so much at variance with official propriety.

Your Excellency adverts to a communication which you state yourself to have made respecting Mr. Willis, on the subject of attacks made by that Gentleman upon other public Officers. That communication has not yet reached this Department.

Adverting, however, to the statements made in the close of your dispatch respecting the proceedings of Mr. Willis, I find it my duty, however reluctantly, to instruct Your Excellency that you do seriously admonish Mr. Willis of the necessity of maintaining more circumspection and reserve in the exercise of his judicial Office for the future. However reluctant I should be to animadvert upon the conduct of any Gentleman holding His Majesty's Commission as a Judge, I should, by the continuance of such conduct as you describe, be placed under the painful necessity of humbly advising His Majesty to mark His disapprobation of Mr Willis proceedings in a manner which would be most ungrateful to my own feelings.

I have the honor to be,
Sir,
Your most obedient humble Servant

G. MURRAY

Major General
Sir Peregrine Maitland
K.C.B.
&c &c &c

HAY TO MAITLAND.[1]

Private

Downing Street

21st. July 1828.

Dear Sir

The conduct of Mr. Willis in pronouncing the opinion which he appears to have done on the incompetency of the Court of Kings Bench in Canada in its present state, has imposed upon Sir George Murray the necessity of providing for the exigency of the moment in case the Judges should adopt the opinion entertained by Mr– Willis– You will accordingly receive an official Despatch

[1] *G. 64, pp. 43-47.*

directing you to appoint M[r]. Robinson, Chief Justice of the Province ad interim, should he be disposed to accept the Office. I conclude that the Attorney General will not object to this arrangement, although he will be exposed to some pecuniary sacrifice by it– but I suppose there is no manner of doubt that, as the fittest person in the Province, he will be appointed Chief Justice whenever a vacancy may occur; & although there is no intention whatever of superseding M[r]– Campbell at the present moment, his retirement may be looked to at no distant period:–

It is unnecessary for me to enlarge upon the very extraordinary conduct of M[r]– Willis on this occasion– The stile & frequency of some recent communications which he has made to this Department have impressed me with no very favourable opinion of his discretion & his sense of propriety, but I was not prepared for so singular a proof of his deficiency in both respects, as he has lately displayed.

You will probably think it advisable to read to him the official Despatch from the Secretary of State which will be sent off to you this day, as it is evident that unless some check to his folly be interposed, it will be impossible to avoid having recourse to harsher measures.

I have the honor to be
Dear Sir
Your very obed[t]–
faithful Serv[t].

Sir P. Maitland

R. W. HAY

Murray to Colborne.[1]

Downing Street

N° 8.

5[th] Dec[r] 1828

Sir

With reference to Sir Peregrine Maitlands dispatch of the 5[th] July last, relative to the conduct of M[r] Justice Willis, and the measure which he felt it to be his duty to adopt of removing him from his Seat on the Bench, I have now the Honor to transmit to you a Copy of M[r]. Willis Memorial to His Majesty in Council with various Papers to which it refers, by which you will perceive that the conduct of M[r] Willis is at present under the consideration of the Privy Council.

I have the Honor to be
Sir,
Your most obedient
Humble Servant

G. MURRAY

M General
Sir John Colborne
K C B

Endorsed From Sir G. Murray transmitting the Memorial of Judge Willis to His Majesty.

[1] *G. 64, p. 203.*

DEPUTATION TO GREAT BRITAIN.[1]

Instructions aux agents, 6 Feb. 1828[2]

Le Comité de Montréal est bien persuadé que:

Les Agens de la Province, choisis à l'unanimité par une députation de personnes des plus influentes, réunies de toute les parties de la Province, répondront à sa confiance, soit qu'ils reçoivent ou ne reçoivent pas d'instructions sur la manière dont ils doivent remplir l'honorable mission qui leur est confiée.

Le Comité de Montréal, en leur suggérant les instructions suivantes, le fait moins pour leur prescrire ce qu'ils feront, que pour leur exprimer qu'ayant la plus entière confiance dans leur Patriotisme éclairé il laisse à leur sagesse de se conformer au désir de ce Comité ou de s'en écarter dans quelques détails, selon que le bien du pays au service du quel ils se sont dévoués depuis tant d'années et se dévouent en ce moment leur paraîtra le requérir.

Rendus en Angleterre, ils y puiseront, mieux que nous ne le pouvons faire ici, des lumières sur les vues des Ministres de Sa Majesté à qui ils vont demander la punition des actes d'oppression que nous avons soufferts sous la présente Administration Provinciale, et des garanties nouvelles et nécessaires contre leur répétition sous des Administrations futures.

Notre Constitution est modelée sur celle de la Métropole. Il faut donc qu'elle ait été presque constamment Administrée dans un système d'opposition à son esprit et à ses principes puisque, chose impossible en Angleterre, l'Exécutif a pu constamment mépriser l'opinion publique; dédaigner les prières du peuple; repousser les Bills les plus utiles et en grand nombre adoptés par le Corps Représentatif; se rendre impunément l'Accusateur calomnieux de la Représentation du pays; dilapider ses revenus et les distribuer pendant plusieurs années consécutives sans l'autorité de la Loi: puis qu'il a pu composer le Conseil Législatif et les Tribunaux d'hommes tellement dans sa dépendance que ces corps ne sont distincts que de nom de l'Exécutif et dans la réalité ne sont que le même pouvoir sous diverses formes. Il est résulté de cette erreur capitale que ce malheureux pays a été gouverné au milieu de dissentions telles qu'elles naîtroient en Angleterre, si l'on y pourvoit supposer un Roi, avec l'influence de son Conseil Exécutif seul et sans l'intermede d'une Chambre des Lords, essayant d'y Gouverner et pendant plus de trente ans se trouvant toujours en minorité dans une Chambre des Communes qui auroit autant de poids et d'influence auprès du peuple, comme en a dans le système actuel la Chambre des Communes. Une haine inextinguible entre deux partis; celui des Courtisans ne pouvant se maintenir que par le secours d'armées venues et soudoyées du dehors, et celui de la Nation souffrant jusqu'à ce qu'elle tombât dans les malheurs de l'esclavage ou dans ceux de la resistance à main armée, seroit le résultat d'un ordre de choses si contraire aux droits de Sujets Britanniques. Ce qui est la plus absurde des fictions pour l'Angleterre est

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[1]The practice of sending agents to London dates from the earliest years of the colony. These selections have been given as illustrations of the methods employed and also of the pitch to which public feeling had been roused.

[2]*Neilson Papers, Vol. 6, pp. 53-60.*

l'exposé trop vrai de l'état de Sa Colonie. Aussi une immense Majorité est-elle persuadée qu'il est essentiel que la composition actuelle du Conseil Législatif soit changée. Le rappel et la punition méritée du Gouverneur en Chef ne préviendroit pas le retour des excès qu'il s'est permis, si les mêmes pieges sont tendus par les mêmes hommes à ses Successeurs.

Dans la grande variété des différens sujets qu'embrassent la Requête du District de Québec, et celle des Districts de Montréal et des Trois-Rivières, ainsi que les résolutions adoptées dans différens Comtés, le vice radical de la composition de ce corps où l'Executif appelle qui bon lui semble, sans qu'aucune qualification offre de garanties, contre l'esprit de servitude ou contre la corruption de Législateurs ainsi nommés pour la durée entière de leur vie, est le plus grave des griefs nombreux qui y sont détaillés. Les Agens feront sentir combien nos plaintes sont fondées à cet égard. Ils représenteront la nécessité qu'il y a de porter dans le Conseil des hommes nouveaux, dignes également de l'estime du Gouvernement et du public, attachés à la sécurité de l'un, à la prospérité de l'autre par leurs principes et par des propriétés foncières. Tous autres remedes ne seront que des palliatifs contre des maux qui renaîtroient au premier jour.

S'ils persuadent le Ministère, ils lui diront qu'ils aiment mieux recevoir le bienfait qu'ils demandent pour nous de la justice de Notre Auguste Souverain et de la libéralité de ses Ministres qui recommanderoient l'Adoption d'un acte de la Législature Coloniale établissant une qualification bâsée sur la possession de propriétés foncières au montant d'un revenu assez élevé pour assurer l'indépendance du Conseiller, qui ne pourroit accepter d'emploi lucratif que sous la condition de rendre vacant son siège. Ceci est une Loi que Notre Législature est aussi compétente à passer, comme celle du Haut-Canada a pu en passer une pour établir une qualification bâsée sur la possession d'un revenu afin d'être éligible dans la Chambre d'Assemblée; ce que l'acte Constitutionnel n'avoit pas exigé.

Ce bienfait, tout grand qu'il soit, nous ne voulons pas le demander au Parlement Impérial, non plus qu'aucune autre Loi que notre propre Législature est compétente à passer; parce que, si dans un tems où il est bien informé et par l'influence d'un Ministère libéral, il nous donne une bonne loi, dans un moment où il seroit mal informé et sous un Ministère illibéral, il aura pris l'habitude de faire pour nous les Lois que nous aurions pu faire nous-mêmes.

Nous considérons notre Acte Constitutionnel comme le pacte le plus solemnel et le plus inviolable que pouvoit nous donner, pour assurer la conservation de nos droits, le Parlement Impérial. C'est un contrat où il n'est qu'une des trois parties interessées. Les habitans du Bas Canada, aujourd'hui au nombre de plus de cinq-cent-mille, et dont le nombre redouble en vingt ans; ceux du Haut-Canada, aujourd'hui au nombre de près de deux-cent-mille, qui se sont redoublés de dix en dix ans sont également parties à ce contrat. Leur sécurité est troublée et la foi publique est violée à leur égard, si une seule des parties au contrat blesse les interêts et change la condition de quelqu'une des deux autres à son insçu ou malgré elle. Les Agens doivent donc répondre à toute proposition ou tentative de changer cet acte par un autre, avec une inflexible fermeté, qu'ils s'y opposent, et maintenir que l'acquiescement des peuples des deux Provinces librement exprimé par eux-mêmes ou leurs Représentans est nécessaire pour légaliser tout changement non prévu, non indiqué par l'Acte Constitutionnel même.

Si néanmoins des changemens étoient proposés en Parlement, tels qu'au sentiment des Agens ils dûssent clairement être pour l'avantage du Pays, tout en demandant qu'ils ne fussent adoptés que sous la condition qu'ils auroient l'acquiesment de la Province, ils ne manqueront pas d'applaudir à toutes les idées libérales qui tendroient à assurer aux Colonies Continentales de l'Amérique un plus grand degré de liberté que celui dont elles ont joui, et une plus grande part et influence sur leur Gouvernement local, ainsi que le demandent la rapide progression de leur population, la division égale de la propriété parmi leurs habitans et leur proximité des Etats-unis d'Amérique à qui elles ne devroient rien avoir à envier.

Toute demande d'Union des Législatures des deux Provinces, ci-devant repoussée avec indignation par leurs habitans, et maintenant sollicitée par le Gouverneur et la foible faction qui se rallie au tour de lui, doit être rejetée et denoncée comme un crime de la part de celui qui, envoyé pour administrer les Lois et la Constitution du pays telles qu'elles sont fixées et établies, a l'indécence de proclamer publiquement que depuis longtems il y demandoit à notre insçu auprès du Gouvernement de l'Empire des changemens dont nous ne voulons pas.

Toute idée de démembrement de la Province du Bas-Canada, sous le prétexte de donner au Haut-Canada un port d'entrée, ou sous tout autre prétexte, doit être rejetée comme préparant une indigne spoliation des droits de propriété privée qui pour les Canadiens deviendroit incertaine ou plutôt seroit certainement détruite et envahie si une partie d'eux passoient sous le régime d'une Province dont la grande Majorité des Législateurs, des Administrateurs et des Juges ne connoitroient rien aux principes des Lois Civiles Françaises sous les quelles ont été acquis, transmis et régis les biens dans le Bas Canada: Comme séparant par la violence les enfans d'une même famille, à qui la foi des Capitulations et des traités, les Actes de 74 et 91 ont assuré le droit de conserver, de perpétuer, de défendre ensemble leur Religion, leurs Lois, leurs usages, leurs biens, tous exposés à souffrir dans le projet de cet inique morcellement du Canada ci-devant divisé en deux Provinces dans le plan avoué et qui étoit de stricte justice de conserver, dans le Bas-Canada, aux sujets d'origine française leurs Lois et leurs privileges particuliers aussi longtems qu 'ils y seroient attachés, et aux sujets d'origine Britannique leurs Lois et leurs privileges particuliers, dans une autre Province, celle du Haut-Canada.

D'après les avis de Sir Francis Burton, de Sir James McIntosh, de M^r^. Hume et autres Représentans libéraux, les Agens seront, bientôt après leur arrivée en état de juger des dispositions des Ministres à l'égard du Canada. Ils doivent leur remettre les deux Requêtes adressées au Roi et, s'ils le jugent à propos, des copies des résolutions adoptées en differens Comtés. Tels seront les textes sur les quels les Ministres pourront leur demander des explications et des preuves.

Si les Ministres sont favorablement disposés et prennent des mesures promptes et efficaces pour remédier à la plus grande partie des maux que nous souffrons, il faudra que les Agens en ce cas se guident d'après le désir des Ministres quant à la détermination de présenter ou retenir les Requêtes adressées aux Chambres.

Mais si, contre toute attente et toute justice, les Ministres étoient circonvenus et partageoient les odieuses préventions que nourrit contre nous l'Administration

du Bas-Canada, il faudroit, même avec la perspective décourageante de ne rien obtenir contre leur influence, que les Requêtes fussent présentées au Parlement— pour apprendre à ceux qui nous suivront que, lorsque nous avons souffert l'oppression, nous nous sommes plaint au Gouvernement dont le devoir étoit de la faire cesser, et qu'il l'a appesantie sur nous; qu'il a jetté des semences dont il doit tôt ou tard recueillir les fruits — l'amour, s'il est protecteur, la haine s'il est oppresseur.

Le Comte de Dalhousie a si souvent répété que sur sa propre responsabilité il avoit ordonné, sans l'autorité de la Loi, de distribuer de fortes sommes du revenu public, que les Agens s'efforceront, le plutôt possible, d'apprendre si ces expressions ont quelque valeur réelle ou si elles sont dites en dérision d'une Province que les Gouverneurs pourroient piller avec impunité. Aussitôt qu'ils pourront avoir une opinion légale pour savoir comment le public ou le Gouvernement Provincial ou quelque Autorité en Angleterre peut forcer un Gouverneur à restituer des argens illégalement pris, même pour service public, ils voudront bien le faire connoître; en cas qu'il y ait, durant leur absence, une Session du Parlement, où une connoissance de cette opinion seroit si nécessaire.

La décision de la Trésorerie " qu'elle n'étoit pas tenue de répondre de la malversation de M^{r} Caldwell ", a été plus prompte peut-être qu'éclairée, lorsque les droits du pays n'étoient appuyés que par les argumentations de Milord Dalhousie et de ses Conseillers, tous interessés à ce qu'en Angleterre on s'occupât aussi peu que possible de leur Administration en Canada. Les Agens pourroient présenter la question sous quelque jour plus favorable que ne l'ont fait des Fonctionnaires salariés et prévaricateurs.

Une opinion qui demontreroit l'illégalité des ordres donnés pour faire exécuter les ordonnances de milice, depuis longtems abrogées, devroit être publiée avant le retour du mois de mai, qui, sans celà, ramenera peut-être des vexations injustes qui s'étendent à toute la population et démoralisent ceux qui osent ordonner, et tendent à avilir ceux qui veulent obéir aux caprices de tout autre pouvoir que celui de la Loi.

Dans une Colonie encore toute hollandaise et gouvernée despotiquement, dix ans avant l'événement, la violence commise contre la liberté de la presse par Lord Sommerset a décidé de sa perte, et vivement interessé le Parlement et la Nation Anglaise. En Canada, dont la presque totalité des habitans sont nés sujets Britanniques et qui depuis trente six ans jouissent du système Représentatif, la violence commise contre la liberté de la presse à l'égard de Mes^{rs} Waller et Duvernay, est un attentat bien plus odieux, dont il faut faire connoître les circonstances et les auteurs et avoir l'opinion d'hommes de Loi pour la rendre publique ici, avant que, par la persécution illégale de ces Individus, le droit de toute la Société soit sérieusement compromis.

Les Agens formeront quelque liaison durable avec quelque établissement d'imprimerie, dans lequel ils donneront, s'ils le jugent à propos, leurs observations au public Anglais sur l'état de la Province, et dans lequel la même mesure pourra être continuée après leur retour en Canada, et auquel des extraits des papiers Provinciaux pourront être envoyés pour y être réimprimés. Ils informe-

ront Le Comité des mesures à prendre et du montant des sommes qui seront nécessaires pour donner effet à cet utile projet.

MONTREAL le 6 Fevrier 1828.

FRS ANT. LAROCQUE, V.P.
LOUIS ROY PORTELANCE, V.P.
F. A. QUESNEL
L. J. PAPINEAU
R. KIMBER
JOCELYN WALLER
H. HENEY
DANIEL TRACEY
J. B. LEBOURDAIS
J. BERTHELOT
J. RAIZENNE
FRS. RICORD
SIMON VALOIS
P. RITCHOT
A. N. MORIN
A. JOBIN
L. M. VIGER

(Translation)

INSTRUCTIONS TO THE AGENTS, FEB. 6th, 1828.[1]

The Committee of Montreal is convinced that:

The agents of the province, unanimously chosen by a deputation of most influential people brought together from all parts of the province, will satisfy its expectation, whether or not they receive instructions as to the manner in which they must fulfil the honourable mission entrusted to them.

The intention of the Committee of Montreal in offering the agents the following instructions is not so much to prescribe what they will have to do as to express the full confidence of the Committee in their enlightened patriotism by leaving to their discretion the choice to act conformably to the wishes of the said Committee or to deviate from them as the welfare of the country at the service of which they have been for so many years and to which they are still devoting themselves on this occasion, will seem to require.

Once in England, they will ascertain, more easily than could be done here, the views of His Majesty's ministers, whom they will beg to punish the oppressive acts which we have suffered under the present provincial administration and to give us some new and necessary securities against the repetition of such acts under future administrations.

Our constitution has been modelled on the constitution of the mother-country. It must have been administered, almost invariably, in disagreement with its spirit and its principles as, a condition which would be impossible in England, the Executive here has constantly been able to treat public opinion with scorn; to

[1]*Neilson Papers, Vol. 6, pp. 53-60.*

ignore the demands of the people; to refuse a great number of most useful bills, adopted by the representative body; to become with impunity the slanderous accuser of the representatives of the country; to waste revenues and to apply them, for many consecutive years, without legal appropriation; to compose the Legislative Council and Courts of men so subject to the Executive that the name is the only distinction between the different bodies and, in reality there is only one power under different forms. The result of such a striking error is that this unfortunate country has been governed in the midst of dissensions such as England would experience if we could imagine there a King with the influence of his Executive Council only and without the medium of the House of Lords, trying to govern and, for more than thirty years, being always in minority in a House of Commons which would have with the nation as much weight and influence as the House of Commons actually has. From an order of things so contrary to the rights of the British subjects would result an irrepressible hate between two parties; the party of the courtiers holding itself only with the help of a host of bribed outsiders, and that of the nation, suffering to the point of slavery or being forced to fight. What would be the most absurd fiction for England is too real in its colony. Consequently, the great majority of the inhabitants is convinced that a change of the actual composition of the Legislative Council is essential. To have the Governor in Chief recalled and deservedly punished would not prevent the return of the excesses he committed if the same men were allowed to set the same traps for his successors.

The most serious of the numerous complaints exposed in the request of the district of Quebec and in the one from the districts of Montreal and Three Rivers, also in the resolutions adopted in the different counties, is the radical defect in the composition of that body (the Legislative Council) where the Executive calls whoever appears to them suitable, without any qualifications being required as security against subjection or bribery on the part of legislators so appointed for life. The agents will bring to light the good reasons we have for complaining in this regard. They will set forth the necessity of naming in the Council new men, worthy of the esteem of both the Government and the public and who, thanks to their principles and land holdings should be interested in the security of the one and the progress of the other. All other remedies would only be palliatives against evils which would revive at the first opportunity.

If they can convince the Minister of State, they will be told that it is preferable to receive the favour begged for us through our august Sovereign's sense of justice and the generosity of His Ministers, who would recommend the adoption of an act of the Colonial Legislature, laying down a qualification based on the possession of lands, of a value high enough to assure the independence of the councillor who could not accept a lucrative post without vacating his seat. our Legislature is just as competent to pass this law as was the Legislature of Upper Canada when she passed a law basing the eligibility to the House of Assembly on the possession of a certain revenue, a condition not provided for by the Constitutional Act.

We do not want to ask the Imperial Parliament for this favour, so great be it, nor for any other law that our own Legislature is competent to pass, as, when well-informed and under the influence of a liberal ministry it might give us a

good law, whereas when ill-informed and under an ungenerous ministry it would be liable to pass for us laws that we could have enacted ourselves.

We consider our Constitutional Act the most solemn and sacred pact that the Imperial Parliament could have given us to guarantee the preservation of our rights. It is an agreement to which the Parliament is only one of three interested parties. The inhabitants of Lower Canada, numbering to-day more than five hundred thousand and redoubling their number every second decade, and those of Upper Canada whose population is to-day nearly two hundred thousand and which has redoubled every decade, are equally parties to this agreement. Their safety is troubled and public faith violated if one of the parties to the agreement injures the interests or changes the condition of either of the two others without her knowing it or against her will. Consequently, any proposal or attempt to replace this act by another one must be opposed with unrelenting firmness by the agents who will maintain that any changes not provided for nor contained in the Constitutional Act itself can be legalized only by the free assent of the people of the two provinces, self-expressed or voiced by their representatives.

If however, the agents were of the opinion that some changes proposed in Parliament are evidently in the interest of the country, while insisting that such measures be adopted only with the assent of the province, they will, without fail, commend all liberal ideas which would tend to secure, for the continental colonies of America, a greater degree of freedom than is so far enjoyed and a greater influence in their local government, such as is called for by the rapid increase of the population, the equal distribution of property amongst the inhabitants and the proximity of the United States of America which we should have no cause to envy.

Any request to unite the Legislatures of the two provinces, heretofore refused with indignation by the inhabitant and now proposed by the governor and the weak faction surrounding him, must be rejected and denounced as a crime on the part of a person sent to administer the laws and constitution of our country as they are enacted and established, who has the indecency to declare openly that for a long time and unknown to us he has begged the Government of the Empire to make changes which we do not want.

All idea of division of the province of Lower Canada, under the pretext of providing Upper Canada with a port of entry, or under any other pretext, must be rejected as a shameful spoliation of the rights attached to private properties which, for the Canadians, would become insecure or rather, surely destroyed and encroached upon, if a certain number were placed under the government of a province whose great majority of legislators, administrators and judges, would ignore every principle of French civil laws under which the properties have been acquired, transferred and administered in Lower Canada. It would be like compulsorily separating children of the same family to whom had been guaranteed, on the strength of capitulations, treaties and the acts of 74 and 91, the right to keep, perpetuate and defend together their religion, laws, customs and property, all exposed to suffer by this project of iniquitous subdivision of Canada, heretofore divided in two provinces, in the avowed plan which afforded strict justice in maintaining for the subjects of French origin in Lower Canada their laws and

their private privileges, as long as they would be attached to them, and for the subjects of British origin, their laws and private privileges, in another province, Upper Canada.

Sir Francis Burton, Sir James Mackintosh, Mr. Hume and other liberal representatives are of the opinion that, soon after their arrival, the agents will be able to ascertain the state of mind of the ministers with regard to Canada. They will lay before them the two requests addressed to the King and, if they think it proper, copies of resolutions adopted in different counties. Those will be the texts on which the ministers will be free to ask the agents for explanation and testimonials.

If the ministers are favourably disposed and take quick and effective measures to remove the majority of the evils we are subject to, the agents, in such a case, will be guided by the wishes of the ministers in determining if the request addressed to the two Houses should be presented or retained.

But if, contrary to expectation and justice, the ministers have been brought to share the odious prejudices of the administration of Lower Canada against us, even if there remained only the discouraging prospect of not obtaining anything against their influence, the requests would have to be presented to Parliament in order to let our successors know that when oppressed we complained to the Government whose duty it was to put a stop to such a condition, but the yoke was made still heavier; seeds had been thrown about from which fruits will sooner or later spring; love if protection is afforded, hatred if the Government is tyrannical.

The Earl of Dalhousie so often repeated that he ordered, on his own responsibility and without legal authority, the disposal of large sums of public money, that the agents will endeavour to find out, as soon as possible, if these expressions have any real meaning or if they are only said in derision of a province that the governors could plunder with impunity. As soon as they can obtain the legal opinion which would permit them to ascertain how the public, or the provincial Government, or any other authority in England, can make a governor pay back the sums unlawfully taken, even for public services, they shall report, in case Parliament should sit in their absence when the knowledge of such an opinion would be most necessary.

The decision of the treasury "that they are not answerable for Mr. Caldwell's malpractices" has perhaps been more hasty than enlightened, as the rights of the country were founded only upon the argumentation of Lord Dalhousie and his advisers who are all interested in making England trouble herself as little as possible with their administration in Canada. The agents will put the question into better light than has been done by some shuffling and salaried officers.

An opinion showing the unlawfulness of certain orders given to execute long repealed militia ordinances, should be published before the coming month of May, otherwise, unjust vexations might spread again over the whole population, demoralizing those who dare to command and tending to disgrace those who wish to obey the caprice of all power but the power of law.

In a colony still quite Dutch and governed in a despotic way ten years before the event, the violation of the liberty of the press by Lord Sommerset has decided its loss and greatly interested the Parliament and the English nation. In Canada,

where almost the whole population is composed of British subjects by birth, who have enjoyed for thirty years a representative government, the attack on the liberty of the press, with regard to Messrs. Waller and Duvernay,[1] is an attempt far more invidious and about which one must learn the circumstances and the originators, also obtain the opinion of lawyers, for the information of the public, before the illegal persecution of these men compromises seriously the right of the whole Society.

The agents will form lasting connections with some printing firm, where they will have published, as they think fit, their observations to the English public on the state of the province; that practice will be maintained after their return to Canada by sending extracts of provincial papers to be reprinted. They will inform the Committee of the measures to be taken and of the sums necessary to put into effect this useful project.

Montreal, February 6th, 1828.

Frs Ant. LaRocque, V.P.
Louis Roy Portelance, V.P.
F. A. Quesnel
L. J. Papineau
R. Kimber
Jocelyn Waller
H. Heney
Daniel Tracey
J. B. LeBourdais
J. Berthelot
J. Raizenne
Frs. Ricord
Simon Valois
P. Ritchot
A. V. Morin
A. Jobin
L. M. Viger

[1] *See below, p. 506.*

CONSTITUTIONAL COMMITTEE OF THE DISTRICT OF THREE RIVERS,

SITTING OF THE 30th JANUARY 1828.[1]

- - - - - - - - - - - - - -

Resolved unanimously on motion of Mr– Charles Mondelet seconded by Mr– Pierre Bureau, that the following instructions be addressed and forwarded to Messrs John Neilson, Denis Benjamin Viger and Austin Cuvilier appointed, at the Montreal Meeting of the twenty fourth instant, as Agents of this Province, to represent and maintain in its name, at the foot of the Throne and before the Imperial Parliament, the existence of grievances which overload us.

To John Neilson, D. B. Viger and Austin Cuvilier Esquires.

GENTLEMEN,

However unnecessary it may be, to inform you of your duties, that we should add anything to the instructions which you have already received from the Committees of Montreal and Quebec, we nevertheless deem it expedient that the wishes of the District of Three Rivers, should be well and distinctly known by His Majesty and the Imperial Parliament towards whom you are sent by this Province. The Resolutions and Petition by us adopted which are also those of Montreal, faithfully express what we do think, what we do know, what we do believe, and what we do wish. The critical state wherein the Country now stands, demands of you, Gentlemen that firmness that has so highly distinguished you to this moment, and which makes us augur the most satisfactory results from your generous endeavours, when Home, there to make it known, that in this Country, the name of the best of Kings is made use of to oppress us; that our fidelity and loyalty make us deserving of a different treatment, and that deeply impressed with the value of our rights, we shall have spirit enough to maintain them.

The distinguished confidence which the Country does repose in you, and that so deservedly doth assure us before hand– that we shall often receive some communications from you; nothing will tend more to foster in our District, that love of liberty already manifested by the People, and which he has every reason to believe will be preserved to him, by the Mother Country. Our answers will follow your communications, and rest assured that our zeal in expressing ourselves to you, without reserve, will be equivalent to that which has prompted the inhabitants of this District, to raise their voice, against the Tyranny whose weight threatens to crush us, and that we cannot any longer endure.

We do reserve to ourselves, to future times, the expression of our ideas unto you, according to what informations we will receive from you, and as the case shall require–

RENÉ KIMBER *Président*

ANTOINE POULIN DE COURVAL *Vice Président*
(Contresigné)

Secrétaires C.C.D.R. { CHARLES MONDELET / ANT: Z: LEBLANC

[1] *Neilson Papers, Vol. 6, pp. 34-35.*

T. D. Morrison to John Neilson.[1]

(and reply)

York U. Canada

9th February 1828.

Sir,

The very palpable misrepresentations of Doctor Strachan to the British Government relative to the Inhabitants of Upper Canada & its religious Teachers, have excited a general indignance against him; and a fear that his suggestions of establishing a dominant Church in this Colony may be carried into effect, has induced them from every part of the province to petition the House of Commons against the measure.

A Committee in this place entitled a central Committee has been appointed to attend to forwarding the Petitions & other matters in relation thereto– and hearing that yourself & other Gentlemen of Lower Canada are deputed to present matters of interest to Your Province before the Commons conceived it to be the most safe way to transmit the Petitions in question by you to act as their Agent in the business in conjunction with a Gentleman of Upper Canada now in England– if you accede to their earnest wish in this respect be good enough to inform me of your acquiescence, & the time of your departure, and, if the Petitions should not arrive before you leave either, Quebec or Montreal for Europe to where shall they be directed to meet you in England– and you will confer an obligation on those interested– and your most

obt. humble Servt,

T. D. MORRISON,
Secy C. C. York UC

John Neilson Esq.

(Copy of answer dated 19 February Saml.)

Quebec 19th Feby 1828.

Sir,

I have received your letter addressed to my father and dated the 9th inst. I am persuaded that he would do all he could for the Central Committee at York: He left Quebec on the 3d inst and was to have sailed for Liverpool on the 16th Feby packet: His address in London is to the care of

Messrs. PWLG. Wynne
45 Pater Noster Row

I have the honor to be
Your very obedient Servant,

SAML NEILSON.

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[1] *Neilson Papers, Vol. 6, pp. 62-63.*

STANLEY TO CANADIAN DEPUTATION.[1]

M[r]. Stanley presents his Compliments to Mess[rs]. Neilson Viger & Cuvillier, and will be happy to see them at 12 o'clock on Thursday, should that time suit them. M[r]. Huskisson being seriously indisposed, it is not probable that his motion upon the state of Canada will come on so soon as it is now intended.

M[r] Stanley had written to fix an earlier time for seeing the Gentlemen of the Canadian Deputation, but was prevented from sending it by the omission mentioned in their second note which he has just received.

Whitehall Yard
Tuesday 3 o'clock.

CONNECTIONS BETWEEN UPPER & LOWER CANADA.

W. L. Mackenzie to John Neilson [1]

[27 November 1828]

To John Neilson, Esq., M.P.–Quebec.

D'[r] Sir:

It was expected here, previous to your arrival from England, in Montreal, that you would have visited Upper Canada on y'r way home – this expectation, I believe, arose out of some conversation you had had with M[r]. George Ryerson, agent for the Dissenters, before he left London. And so well pleased were the people here with your exertions on behalf of the colonists, that it was intended to have given you a public dinner in honour of the cause you had so ably and indefatigably espoused. You did not come, however, nor have I learnt that you, or M[r] Cuvillier, or M[r] Viger (if he be ret[d].) have written to or corresponded with any of the members of Assembly who form the opposition to Doctor Strachan's system of Govm[t].

During the last two years, I have written either thrice or four times to M[r] Samuel Neilson, but only once rec[d] any reply; I have, therefore, presumed that he has no time to answer requests out of the line of his profession, and tho' not personally acquainted with you, more than with M[r] Neilson, Jun[r]– have, this time, addressed you – and that, because y'r active assistance given to the cause of the Lower Canadians induces me to think that you will also be willing to give us of Upper Canada such information as you can furnish for our guidance and good understanding with the sister province.

It has been expressed to me within a very short period by M[r] Rolph M[r] Randal, M[r] Bidwell, Doctor Baldwin, M[r] Cawthra, M[r] Ketchum, and several other members of our provincial legislature, that to cultivate a good understanding with the Indepen[dt] Members of y'r parliament, would be very advisable, and might be conducive to the mutual interests and advantage of both colonies. Such also is my own opinion. If, therefore, we could receive authentic copies of such of the proceedings of Y'r legislature, as might concern the interests of both provinces, or as might be to us a precept and example by which to profit –

[1] *Neilson Papers, Vol. 6, p. 313.*
[1] *Neilson Papers, Vol. 6, pp. 228-231.*

and also occasional individual suggestions, upon important provisions would be well and desirable. Letters and packets addressed to assemblymen during the Session are all paid for by the province – printed papers come free when there is room in the mails – and at other periods than the sitting of parliament, no one of us would think of the expense of conveyance of any papers that might be sent us for general information. Should you, therefore, write, to myself, or any of the other members whose fixed residence is at York; or should M^r^ Cuvillier write – we will at all times be happy to hear from you, and to join with you in any measure that may be for the common good.

Would not one agent if a Canadian, or one long resid^t^– in Canada, serve in London, for both provinces?– I consider the residence of an active agent at the British seat of Gov^t^. as indispensible to Colonial interests, and wait with no little anxiety for y'r proceed^g's^ below on that question.

Elected to parliament, in the teeth of all the weight power & influence of Gov^t^ and that too for the most populous and wealthy shire in the Colony, & the immediate seat of the local administration, I offer to you a convincing proof in my own person how unpopular the means of the late lieut^t^– Gov^r^ & his advisers must have been. In the Advocate of this day you will see Sir John Colborne's replies to two addresses, from which, and private information, I judge he is to pursue popular and friendly measures– and some of us think it would be well for the legislature at its meeting to assert *that principle* so long in use in Britain, which, tho' it does not dictate to the sovereign (or his representative here) the ministry he must choose, yet informs him that a change of confidential advisers is tho^t^. needful, and that such change, as will induce parl^t^. to repose with confidence in the integrity of the successors. It is in contemplation to assert this principle *here* – and we wait with anxiety for y'r example in L. C. I would wish to possess y'r sentiments on the subject, in a letter, not private nor for printed publication, but such as I might shew to the other members at my discretion. Nothing is more certain than that the regulations of Parliament, may be entirely set at nought, by vicious executive councils. With D^r^ Strachan & his scholars, in the manag^t^ of our revenues, no good could be expected from any parl^t^. that could be assembled. – Only to think of the Well^d^ Canal, what a humbug of a direction they there had all along. Ignorance, folly, and cupidity, united with avarice and the canal as it stands is their monument. I wish Lower Canada would make some inquiry into the affairs of this work their £25,000 is sunk in it and they will probably look to it.

The Deep Cut is tumbling in, *avalanche* after *avalanche* ($20,000 or $30,000 damage) and the whole when looked into, will, or else I greatly deceive myself – prove to be a disgraceful job to some folks. Of the Report of y'r British-Canada^n^. Com., with the evidence, (*See Advo. of this day, &c.*) no one official copy has as yet reached us here – perhaps you could procure us one from Lower Canada. I have seen extracts of part of the evidence with papers of that province. Sir John Colborne keeps up a correspondence with Sir James Kempt. I hope they two will decide upon pursuing measures calcula[ted to] allay the late and pres^t^. discontents. – One thing is certain, the people of late receive less abuse from official and [demi]-official newsvenders in both colonies than formerly came to their share and perhaps the Halifax Free Press is correct in anticipat^g^ that Sir

Ja^{s}. Kempt will not tolerate the old calumnies to be longer propagated. – The Advocate newspaper has a circulation, evidently superior to any other journal in the colony, but I would at once resign it if I could find some person capable of conduct^{g} it on liberal principles and in such a way as would continue to it that influence which independ^{t} public prints ought to possess on the public mind. This is my day of publication, and I have taken an hour to myself to write this hasty scrawl, before the post departs at eleven, for Quebec. That hour is at hand, and does not allow me to read what I have written far less to get my letter written in a fair hand. Your goodness will excuse these defects, however, in an Upper Canada Printer – and – Believe me – I remain,

With much respect
Your obed^{t} and Humb^{l} Serv^{t}

Wm. L. MacKENZIE.

P.S. A member of Assembly *privately* suggested to me that M^{r} Stanley, late under-secretary, might be with advantage appointed prov^{l}. agent. It is possible you may know him? I doubt the propriety of such an appoin^{nt}.

2nd P.S. The member referred to in this newspaper, from whom I had information yesterday, that the damage already done at the Welland exceeds $20,000 or $30,000, and that it is only a sample of what is to follow, was W. Woodruff, Esq. St. Davids.– What must the engineer have been and what the director, who allowed Yankee speculating contractors – (or perhaps shared their gains) thus to impose on Britain and the Colonies!!! I speak on the information I have.

REPORT OF COMMITTEE OF HOUSE OF COMMONS 1828.[1]

THE SELECT COMMITTEE appointed to inquire into the State of the Civil Government of *Canada*, as established by the Act 31 Geo. III. and to report their Observations thereupon to The House; and to whom several PETITIONS for an alteration in the present Government were referred;—HAVE examined the Matters to them referred, and agreed to the following REPORT:

YOUR Committee began their investigation into the State of the Civil Government of *Canada*, by examining the several Petitions from the Inhabitants of the two Provinces, which had been referred to them by the House. The Petitions from the Townships of the Lower Province, signed by above 10,000 persons, complain of the want of Courts within their own limits, and of the administration of French Law in the French Language; that they are without Representation in the House of Assembly in Lower Canada, and that Emigrants of British origin have been deterred from settling in the Province; and, finally, they pray that a legislative Union may take place between Upper and Lower Canada.

Your Committee then proceeded to examine the Petition signed by about 87,000 Inhabitants of Lower Canada, resident within the Seigneuries, who complain of arbitrary conduct on the part of the Governor of the Province; of his

[1] *Imperial Blue Books, 1820-1829.*

having applied Public Money without legal appropriation; of violent prorogations and dissolutions of the Provincial Parliament; and of his having prevented the passing of many useful Acts, which they enumerate. They complain also, that a Receiver-General had been maintained in the exercise of his functions for some years after his insolvency was known to the Government; that similar abuses had prevailed with respect to the office of Sheriff. And it is further stated, that the rights of the Petitioners had been injured by Acts of the Imperial Parliament, particularly by the Canada Trade Act,[1] and the Act passed in the Sixth year of His Majesty's reign, c. 59,[2] affecting the Tenures of Land.

For a further knowledge of the grievances complained of, your Committee beg leave to refer to the Petitions, which will be found in the Appendix.

Before Your Committee proceed to explain, or to discuss these important subjects, they think it their duty to state that Petitions from the Province of Upper Canada were also referred to their consideration; the prayer of which Petition is, that the Proceeds arising from the sale of certain Lands, set apart for a Protestant Clergy, may not be applied solely to the use of the Clergy of the Church of England, (the adherents to which throughout the Province they state, in contradiction to the representations of Archdeacon Strachan, to be comparatively few in number), but that they may be applied to the maintenance of Protestant Clergymen of other denominations, and to the purposes of general Education.

As these Petitions appear to comprehend the most material subjects that have of late agitated the Provinces of Upper and Lower Canada, Your Committee thought the best course they could pursue was to examine witnesses as to each Petition in succession; and in communicating to the House the information they have received, and the opinions they have been induced to form as to the Civil Government of Canada, they will treat of the different subjects, as much as possible, in the order in which they were investigated.

Your Committee proceeded to examine into the system of Law established in Lower Canada, to which their attention was particularly drawn by the Petition from the Townships. Your Committee have examined evidence in great detail on this subject; from which they collect, that uncertainty has long existed on points of law relating to the Tenure of Real Property in that portion of the Province. It appears that shortly after the cession of the Province, the King of England, in a Proclamation dated the 7th of October 1763, (which will be found in the Appendix,) declared, amongst other things, that "all the Inhabitants of the Province, and all others resorting to it, might confide in His Royal protection for enjoying the benefit of the Laws of England;" and he announced that he had "given commands for the erection of Courts of Judicature, with an appeal to His Majesty in Council."

In the year 1774 the first Act of Parliament was passed, making provision for the better government of this part of the British dominions. By this Act the English Criminal Law was preserved. But is was enacted, "that in all matters of controversy relative to property and civil rights, resort should be had

[1]See *above p. 106.*
[2]See *above p. 291 note.*

to the Laws of Canada as the rule and decision of the same; and all causes that should thereafter be established in every Court of Justice, to be appointed within the Province, should, with respect to such property and rights, be determined agreeably to the said Laws and Customs of Canada." There is, however, one marked exception to this concession of the French Law, namely, "that it should not apply to Lands which had been or should be granted in free and common soccage."

After an interval of seventeen years this Act was followed by the Constitutional Act of 1791. The provisions of this important Act have no bearing upon the subject under our consideration, excepting that it provides, with respect to Lower Canada, that Lands shall be granted in free and common soccage, if so desired: and further, that such Grants shall be subject to such alteration as to the nature and consequences of Soccage Tenure as may be made by the Provincial Legislature, and with His Majesty's approbation and assent; but no such alteration has been made.

On examining into the application of those provisions in the Province, it appears not only that doubts have existed as to the true interpretation of them, but that the general practice of the Colony has been to convey real property within the Townships according to the Canadian forms, and that it has descended and been subject to the incidents of that law. In the year 1826 the British Parliament passed an Act, which put its own interpretation of these Statutes beyond the reach of further dispute. This Act, commonly called the Canada Tenure Act, declared that the law of England was the rule by which real property within the Townships was to be hereafter regulated and administered. In offering any recommendations on points of so much difficulty and importance, Your Committee are fully aware of the disadvantages under which they labour, and of their inability, from their want of sufficient technical and local information, to enter for any useful purpose into minute and intricate details. They do not however decline to offer as their opinion, that it would be advantageous that the declaratory enactment in the Tenures Act, respecting lands held in free or common soccage, should be retained; that mortgages should be special, and that in proceedings for the conveyance of land the simplest and least expensive forms of conveyance should be adopted, upon the principles of the law of England, that form which prevails in Upper Canada being probably, under all circumstances, the best which could be selected; that a registration of deeds relating to soccage lands should be established as in Upper Canada.

Your Committee are further of opinion, that means should be found of bringing into effective operation the clause in the Tenures Act which provides for the mutation of tenure, and they entertain no doubt of the inexpediency of retaining the seigneurial rights of the Crown, in the hope of deriving a profit from them. The sacrifice on the part of the Crown would be trifling, and would bear no proportion to the benefit that would result to the Colony from such a concession.

In addition to these recommendations it appears to be desirable, that some competent jurisdiction should be established to try and decide causes arising out of this description of property, and that Circuit Courts should be instituted within the Townships for the same purposes.

The Committee cannot too strongly express their opinion, that the Canadians of French extraction should in no degree be disturbed in the peaceful enjoyment of their religion, laws and privileges, as secured to them by the British Acts of Parliament; and so far from requiring them to hold lands on the British tenure, they think that when the lands in the Seigneuries are fully occupied, if the descendants of the original settlers shall still retain their preference to the tenure of *Fief et Seigneurie,* they see no objection to other portions of unoccupied lands in that Province being granted to them on that tenure, provided that such lands are apart from, and not intermixed with, the Townships.

Your Committee are now desirous of adverting to the Representative System of Lower Canada, with respect to which all parties seem to agree that some change should take place; to this branch of their inquiry they are desirous of recalling to the recollection of the House, that under the provisions of the Act of 1791, the division of the Province, for the purpose of exercising the elective franchise, was entrusted to the Governor; and it appears that Sir Alured Clarke took the numerical amount of the population as the sole basis on which his calculations were formed, and divided into counties as much land as was found to contain a given number of inhabitants; on the thickly-peopled banks of the Saint Lawrence a small district was found to suffice, while in the more distant parts vast territories were comprehended in one county, in order to obtain the required amount of population; thus it happens that the counties of Kent, Surrey, Montreal, Leinster and Warwick, do not, altogether, equal in extent the single county of Buckinghamshire; the small counties too are composed wholly of lands holden as Seigneuries. A Bill actually passed the Assembly, the object of which was to increase the numbers of the Representative Assembly. This Bill did not become a law; and it appears to have been founded upon the same principle, and to have involved the same error, as the original arrangement by Sir Alured Clarke. It has been stated by one of the witnesses, that under the proposed division a disproportionate increase would have been given to the Representatives from the Seigneuries.

In providing a representative system for the inhabitants of a country which is gradually comprehending within its limits newly peopled and extensive districts, great imperfections must necessarily arise from proceeding, in the first instance, on the basis of population only. In Upper Canada a representative system has been founded on the compound basis of territory and population. This principle we think might be advantageously adopted in Lower Canada.

One of the obstacles which is said greatly to impede the improvement of the country, is the practice of making grants of Land in large masses to individuals who have held official situations in the Colony, and who have evaded the conditions in the grant by which they were bound to provide for its cultivation, and now wholly neglect it. Although powers have been lately acquired by the Government to estreat these lands, and although we think that under certain modifications this power may be advantageously used, we are nevertheless of opinion that a system should be adopted similar to that in Upper Canada, by the levy of a small annual duty on lands remaining unimproved and unoccupied contrary to the conditions of the grant.

It now becomes the duty of Your Committee to advert to the Petitions signed by the Inhabitants of the Seigneuries. On the important subjects contained in them, they thought it right to call for explanation from Mr. Neilson, Mr. Viger, and Mr. Cuvillier, Members of the Assembly of Lower Canada, who had been deputed to this country for the purpose of seeking redress for the injuries complained of by the Petitioners.

From the testimony of these gentlemen they have learned, with the deepest regret, that the disputes which have arisen between the Government and the House of Assembly, originating (as they appear to have done) in doubts as to the right of appropriating and accounting for a considerable portion of the Public Revenues, have led to a state of confusion and difficulty in the administration of public affairs in that Colony, which calls for an early and decisive remedy.

With a view to understand accurately the grounds of this dispute, the Committee have carefully examined into the different sources of Revenue arising in Lower Canada, and they have examined also the public documents, which have enabled them to trace the successive steps which have been taken by the contending parties in these disputes. Your Committee beg leave to refer to the evidence of Mr. Neilson, and of Mr. Wilmot Horton, for a detailed account of the origin and progress of these differences.

Upon this important subject Your Committee have felt that they should not do wisely in confining their views to a critical examination of the precise meaning of the words of the different statutes. They look rather to the circumstances of Lower Canada, to the spirit of its constitution, to the position and character of the local Government, and the powers, privileges, and duties of the two branches of the Legislature. Although, from the opinion given by the law officers of the Crown, Your Committee must conclude that the legal right of appropriating the revenues arising from the Act of 1774[1] is vested in the Crown, they are prepared to say that the real interests of the Provinces would be best promoted by placing the receipt and expenditure of the whole Public Revenue under the superintendence and control of the House of Assembly.

On the other hand Your Committee, while recommending such a concession on the part of the Crown, are strongly impressed with the advantage of rendering the Governor, the Members of the Executive Council, and the Judges, independent of the annual votes of the House of Assembly for their respective salaries.

Your Committee are fully aware of the objections in principle which may be fairly raised against the practice of voting permanent salaries to Judges, who are removable at the pleasure of the Crown; but being convinced that it would be inexpedient that the Crown should be deprived of that power of removal, and having well considered the public inconvenience which might result from their being left in dependence upon an annual vote of the Assembly, they have decided to make the recommendation, in their instance, of a permanent vote of salary.

Although Your Committee are aware that the grant of permanent salaries has been recommended to a much greater number of persons connected with the Executive Government than they have included in their recommendation, they have no hesitation in expressing their opinion that it is unnecessary to include so large a number; and if the officers above enumerated are placed on the footing

[1]Quebec Revenue Act, 14 Geo. III. cap. 88.

recommended, they are of opinion that all the revenues of the Province, (except the territorial and hereditary revenues,) should be placed under the control and direction of the Legislative Assembly.

Your Committee cannot close their observations on this branch of their inquiry without calling the attention of the House to the important circumstance, that in the progress of these disputes the local Government has thought it necessary, through a long series of years, to have recourse to a measure, (which nothing but the most extreme necessity could justify,) of annually appropriating, by its own authority, large sums of the money of the Province, amounting to no less a sum than £.140,000, without the consent of the Representatives of the People, under whose control the appropriation of these sums is placed by the constitution.

Your Committee cannot but express their deep regret that such a state of things should have been allowed to exist for so many years in a British Colony, without any communication or reference having been made to Parliament on the subject.

Upon the several points referred to Your Committee, connected with the Office of Receiver-General, of the Sheriffs, and of the Jesuits Estate, Your Committee proceeded to examine evidence upon each. The facts of the case, as regard the Receiver-General, Mr. Caldwell, are detailed in Mr. Neilson's evidence. Mr. Caldwell was a defaulter in 1823 for £.96,000 of the public money of the Province. Upon an examination of his accounts by the House of Assembly, no acquittal could be traced from the Treasury of a later date than 1814, though some balances were stated up to 1819; and it appeared by documents then produced, that the fact of his deficiency was known for a considerable time before he was suspended.

Your Committee recommend for the future, that steps should be taken, by efficient securities, and by a regular audit of the accounts, to prevent the recurrence of similar losses and inconveniences to the Province.

As connected with this branch of the inquiry, Your Committee recommend, that precautions of the same nature should be adopted with regard to the Sheriffs; as it appears that within a few years two instances of the insolvency of these officers have occurred while possessed, in virtue of their office, of large sums of money, deposited in their hands.

With respect to the estates which formerly belonged to the Jesuits, Your Committee lament that they have not more full information; but it appears to them to be desirable that the proceeds should be applied to the purposes of general education.

One of the most important subjects to which their inquiries have been directed has been the state of the Legislative Councils in both the Canadas, and the manner in which these Assemblies have answered the purposes for which they were instituted. Your Committee strongly recommend, that a more independent character should be given to these bodies; that the majority of their Members should not consist of persons holding offices at the pleasure of the Crown; and that any other measures that may tend to connect more intimately this branch of the constitution with the interest of the Colonies would be attended with the greatest advantage. With respect to the Judges, with the exception only of the

Chief Justice, whose presence on particular occasions might be necessary, Your Committee entertain no doubt that they had better not be involved in the political business of the House. Upon similar grounds it appears to Your Committee, that it is not desirable that Judges should hold seats in the Executive Council.

Your Committee are desirous of recording the principle which, in their judgment, should be applied to any alterations in the constitution of the Canadas, which were imparted to them under the formal Act of the British Legislature of 1791. That principle is to limit the alterations which it may be desirable to make by any future British Act, as far as possible, to such points as, from the relation between the mother country and the Canadas, can only be disposed of by the paramount authority of the British Legislature; and they are of opinion that all other changes should, if possible, be carried into effect by the local Legislatures themselves, in amicable communication with the local Government.

Upon the great question of the Union of the two Canadas, Your Committee have received much evidence, to which they desire to call the attention of the House. With reference to the state of public feeling that appears to prevail in these Colonies on this momentous subject, Your Committee are not prepared, under present circumstances, to recommend that measure.

Your Committee nevertheless think it highly desirable that some satisfactory arrangement, (and if possible one of a permanent nature,) should be effected between the two Canadas with regard to the imposition and distribution of the Customs collected in the St. Lawrence. They trust, however, when the heats which so unfortunately exist shall have subsided, that such an arrangement may be amicably effected.

It now remains for us to lay before the House the result of our inquiries into the Clergy Reserves, which appear, by the statements of the Petitioners from Upper Canada, to be the cause of much anxiety and dissatisfaction in that Province. By the Act of 1791 the Governor is directed to make, from and out of the lands of the Crown within such Provinces, such allotment and appropriation of lands for the support and maintenance of a Protestant Clergy within the same, as may bear a due proportion to the amount of such lands within the same, as have at any time been granted by or under any authority of His Majesty. And it is further provided, that such lands so allotted and appropriated shall be, as nearly as the circumstances and nature of the case will admit, of the like quality as the lands in respect of which the same are so allotted and appropriated; and shall be, as nearly as the same may be estimated at the time of making such grant, equal in value to the seventh part of the lands so granted.

The directions thus given have been strictly carried into effect, and the result is, that the separate portions of land which have been thus reserved are scattered over the whole of the districts already granted.

It was no doubt expected by the framers of this Act, that as the other six parts of the land granted were improved and cultivated, the reserved part would produce a rent, and that out of the profits thus realized an ample fund might be established for the maintenance of a Protestant Clergy. These anticipations, however, have not as yet been, and do not appear likely to be, soon realized. Judging indeed, by all the information the Committee could obtain on this subject, they

entertain no doubt that these reserved lands, as they are at present distributed over the country, retard more than any other circumstance the improvement of the Colony, lying as they do in detached portions in each Township, and intervening between the occupations of actual settlers, who have no means of cutting roads through the woods and morasses which thus separate them from their neighbours. The allotment of those portions of reserved wilderness has, in fact, done much more to diminish the value of the six parts granted to these settlers, than the improvement of their allotments has done to increase the value of the reserve. This we think must be apparent from the results of the attempts which have been made to dispose of these lands. A corporation has been formed within the Province, consisting of the Clergy of the Church of England, who have been empowered to grant leases of those lands for a term not exceeding 21 years. It appears that in the Lower Province alone, the total quantity of Clergy Reserves is 488,594 acres, of which 75,639 acres are granted on leases, the terms of which are, that for every lot of 200 acres 8 bushels of wheat, or 25s. per annum, shall be paid for the first seven years; 16 bushels, or 50s. per annum, shall be paid for the next seven years; and 24 bushels, or 75s. per annum, for the last seven years. Under these circumstances the nominal rent of the Clergy Reserves is £.930 per annum. The actual receipt for the average of the last three years has been only £.50 per annum. The great difference between the nominal and the net receipt is to be accounted for by the great difficulty of collecting rents, and by tenants absconding. We are informed also, that the resident Clergy act as local agents in collecting the rents, that a sum of £.175 had been deducted for the expenses of management, and that at the date of the last communication on this subject £. 250 remained in the hands of the Receiver-General, being the gross produce of the whole revenue of an estate of 488,594 acres.

An attempt has been made to dispose of this estate by sale. The Canada Company, established by the Act 6 Geo. iv. c. 75, agreed to purchase a large portion of these reserves at a price to be fixed by commissioners. 3s. 6d. per acre was the price estimated, and at this sum an unwillingness was expressed on the part of the Church to dispose of the lands.

The Government therefore have made arrangements with the Company, and an Act has since been passed authorizing the sale of these lands to any person desiring to purchase them, provided the quantity sold does not exceed 100,000 acres each year.

As Your Committee entertain no doubt that the reservation of these lands in mortmain is a serious obstacle to the improvement of the Colony, they think every proper exertion should be made to place them in the hands of persons who will perform upon them the duties of settlement, and bring them gradually into cultivation.

That their value, whatever it may be, must be applied to the maintenance of a Protestant Clergy, there can be no doubt. And Your Committee regret that there is no prospect, as far as as a present and succeeding generation is concerned, of their produce being sufficient for that object, in a country where wholly unimproved land is granted in fee for almost nothing to persons willing to settle on it. It is hardly to be expected that, with the exception of some favoured allot-

ments, responsible tenants will be found who will hold on lease, or that purchasers of such land will be found at more than a nominal price.

Your Committee, however, are happy to find that the principle of the progressive sale of these lands has already been sanctioned by an Act of the British Parliament. They cannot avoid recommending in the strongest manner the propriety of securing for the future any provision which may be deemed necessary for the religious wants of the community in those Provinces, by other means than by a reservation of one-seventh of the land, according to the enactment of the Act of 1791. They would also observe that equal objections exist to the reservation of that seventh, which in practice appears to be reserved for the benefit of the Crown; and doubtless the time must arrive when these reserved lands will have acquired a considerable value from the circumstance of their being surrounded by settled districts, but that value will have been acquired at the expense of the real interest of this Province, and will operate to retard that course of general improvement which is the true source of national wealth. Your Committee are of opinion therefore, that it may be well for the Government to consider whether these lands cannot be permanently alienated, subject to some fixed moderate reserved payment, (either in money or in grain, as may be demanded,) to arise after the first 10 or 15 years of occupation. They are not prepared to do more than offer this suggestion, which appears to them to be worthy of more careful investigation than it is in their power to give to it; but in this or in some such mode they are fully persuaded the lands thus reserved ought without delay to be permanently disposed of.

To a property at once so large and so unproductive, it appears that there are numerous claimants.

The Act of 1791 directs that the profits arising from this source shall be applied to a Protestant Clergy; doubts have arisen whether the Act requires the Government to confine them to the use of the Church of England only, or to allow the Church of Scotland to participate in them. The law officers of the Crown have given an opinion in favour of the rights of the Church of Scotland to such participation, in which Your Committee entirely concur; but the question has also been raised, whether the clergy of every denomination of Christians, except Roman Catholics, may not be included; it is not for your Committee to express an opinion on the exact meaning which the words of the Act legally convey. They entertain no doubt, however, that the intention of those persons who brought forward the measure in Parliament was to endow with parsonage houses and glebe lands the clergy of the Church of England, at the discretion of the local Government; but with respect to the distribution of the proceeds of the reserved lands generally, they are of opinion that they sought to reserve to the Government the right to apply the money, if they so thought fit, to any Protestant Clergy.

The Committee see little reason to hope that the annual income to be derived from this source is likely, within any time to which they can look forward, to amount to a sufficient sum to provide for the Protestant Clergy of these Provinces; but they venture to press the early consideration of this subject on His Majesty's Government, with a view to an adjustment that may be satisfactory to the Province, of the principle on which the proceeds from these lands are here-

after to be applied; and in deciding on the just and prudent application of these funds, the Government will necessarily be influenced by the state of the population, as to religious opinions, at the period when the decision is to be taken. At present it is certain that the adherents of the Church of England constitute but a small minority in the Province of the Upper Canada. On the part of the Scotch Church, claims have been strongly urged on account of its establishment in the empire, and from the numbers of its adherents in the Province. With regard to the other religious sects, the Committee have found much difficulty in ascertaining the exact numerical proportions which they bear one to the other; but the evidence has led them to believe, that neither the adherents of the Church of England nor those of the Church of Scotland form the most numerous religious body within the Province of Upper Canada.

The attention of the Committee having been drawn to the establishment of the University of King's College, at York, in Upper Canada, they thought it their duty to examine the charter granted to that college; that charter was granted under the great seal, and it is to be observed, that it does not impose on the students an obligation to subscribe to the Thirty-nine Articles, which was done in the case of the other North American Colleges. Your Committee find it provided, amongst other arrangements, for the conduct and government of this institution, that the Archdeacon of York for the time being shall, by virtue of his office, at all times be President of the said College.

It is further ordained, that there shall be within the said College or Corporation a Council, to be called and known by the name of the College Council, which shall consist of the Chancellor, the President, and of seven Professors in Arts and Faculties of the said College; and that such said Professors shall be members of the Established Church of England and Ireland, and shall, previously to their admission, sign and subscribe the Thirty-nine Articles of religion. To this Council the whole government of the College is confided. Of the great advantage which the establishment of a college for the purposes of general education in Upper Canada is likely to confer upon the Province, Your Committee entertain the strongest conviction; they lament only that the institution should be so constituted as materially to diminish the extent to which it might be useful.

It cannot, they think, be doubted, as the guidance and government of the College is to be vested in the hands of the members of the Church of England, that in the election of Professors a preference would inevitably be shown to persons of that persuasion; and in a country where only a small proportion of the inhabitants adhere to that church, a suspicion and jealousy of religious interference would necessarily be created.

For these and other reasons the Committee are desirous of stating their opinion, that great benefit would accrue to the Province by changing the constitution of this body. They think that two Theological Professors should be established, one of the Church of England and another of the Church of Scotland, (whose lectures the respective candidates for holy orders should be required to attend); but that with respect to the President, Professors, and all others connected with the College, no religious test whatever should be required.

That in the selection of Professors no rule should be followed, and no other object sought than the nomination of the most learned and discreet persons; and that (with exception of the Theological Professors) they should be required to sign a declaration, that, as far as it was necessary for them to advert in their lectures to religious subjects, they would distinctly recognize the truth of the Christian Revelation, but would abstain altogether from inculcating particular doctrines.

Though Your Committee have now disposed of the most important subjects of their inquiry, they are aware that on an examination of the Petitions, and of the Evidence, many other matters will appear entitled to consideration.

The Committee think it necessary also to observe, that the evidence from Upper Canada has not been equally ample and satisfactory with that which they have had the advantage of receiving from the Lower Provinces. Your Committee, however, are desirous of directing the attention of Government to the Sedition Act, (should it not be found to have expired,)[1] the repeal of which appears to have been long the object of the efforts of the House of Assembly of Upper Canada.

Your Committee also beg leave to call the particular attention of the Government to the mode in which Juries are composed in the Canadas, with a view to remedy any defects that may be found to exist in the present system.

Your Committee lament that the late period of the Session in which they were appointed has rendered a minute investigation into all parts of the subject submitted to their inquiry impossible. They believe too, that if the Legislative Assemblies, and the Executive Government of Canada, can be put on a right footing, that means will be found within the Province of remedying all minor grievances. They are disposed nevertheless to recommend that the prayer of the Lower Canadians for permission to appoint an agent in the same manner as agents are appointed by other colonies which possess local legislatures, should be granted, and that a similar privilege should be extended to Upper Canada, if that Colony should desire it.

At an early period of their investigation, Your Committee perceived that their attention must be directed to two distinct branches of inquiry:—

1st. To what degree the embarrassments and discontents which have long prevailed in the Canadas, had arisen from defects in the system of laws and the constitutions established in these Colonies.– 2d. How far those evils were to be attributed to the manner in which the existing system has been administered.

Your Committee have clearly expressed their opinion that serious defects were to be found in that system, and have ventured to suggest several alterations that have appeared to them to be necessary or convenient. They also fully admit that from these, as well as from other circumstances, the task of Government in these Colonies (and especially in the Lower Province,) has not been an easy one; but they feel it their duty to express their opinion that it is to the second of the causes alluded to that these embarrassments and discontents are in a great measure to be traced. They are most anxious to record their complete conviction that neither the suggestions they have presumed to make, nor any other improve-

[1]See *above p. 15.*

ments in the laws and constitutions of the Canadas, will be attended with the desired effect, unless an impartial, conciliatory and constitutional system of Government be observed in these loyal and important Colonies.

Your Committee had closed their Inquiry, and were proceeding to consider their Report, when it became their duty to enter into further evidence upon a Petition referred to them by the House, and signed by the Agents who had brought to this country the Petition of 87,000 Inhabitants of Lower Canada, of which mention has been made in a former part of their Report.

This Petition, and the evidence by which it is supported, contain the most grave allegations against the administration of Lord Dalhousie since the period at which those Gentlemen left the Colony.

Those complaints consist chiefly of the dismissal of many officers of the militia for the constitutional exercise of their civil rights; of the sudden and extensive remodelling of the commission of the peace, to serve (as it is alleged) political purposes; of a vexatious system of prosecutions for libel at the instance of the Attorney-General, and of the harsh and unconstitutional spirit in which these prosecutions have been conducted.

Your Committee have hitherto felt that they should best and most usefully discharge their duty by studiously abstaining from commenting upon the official conduct of individuals; but it is impossible for them not to call the serious and immediate attention of His Majesty's Government to these allegations.

Your Committee also feel bound to urge upon His Majesty's Government, in the most especial manner, their opinion, that it is necessary that a strict and instant inquiry should take place into all the circumstances attending these prosecutions, with a view to giving such instructions upon them as shall be consistent with justice and policy.

Your Committee learn, with the greatest concern, that disputes have lately arisen in Upper Canada between the local Government and the House of Assembly, which have led to the abrupt termination of the Session of the Legislature of that Colony.

22 July 1828.

CONSTITUTIONAL MEETING.[1]

Pursuant to Public Notice, a meeting of Subscribers to the Petition to the King and the several branches of the Imperial and Provincial Legislatures, for the redress of grievances, was held at the house of D^r^. Burnsides, King Street, York, on Friday the 15 of August, 1828, for the purpose of forwarding the objects of the petitions, and making arrangements for their transmission to the respective high authorities to whom they are addressed.

W. W. Baldwin Esq^r^. M. P. was unanimously called to the chair, and M^r^. Henry S. Sullivan appointed Secretary.

The Chairman having explained the object of the meeting or motion of D. Morrison seconded by Robert Baldwin Esquire, it was resolved.

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[1] *Q. 353, pp. 88-98.*

That a Committee be appointed for the purpose of watching over the interests of the Petitioners and for forwarding by such means as shall seem best calculated for that purpose the great objects which they have in view that is to say, the preservation of our constitution unimpaired the firm and uncompromising assertion of our unquestionable right to the privileges of British Subjects and to the full enjoyment thereof in principle, in form and in practice, and the constitutional redress of our grievances.

2nd. Resolved/moved by Dr. Morrison seconded by Mr. Doell/ that the said Committee do consist of William Warren Baldwin Esquire M.P. Robert Baldwin Esquire Jesse Ketchum Esquire M. P. Dr. Burnside, Mr. Cawthra, and Dr. Morrison and that any three members shall form a quorum for the dispatch of business.

3d. Resolved / moved by Dr. Morrison seconded by Jesse Ketchum Esquire/ that the said Committee have full power to add to their number if necessary.

4th. Resolved / moved by Dr. Burnside seconded by Robert Baldwin Esquire/ that the Committee do transmit the petition addressed to our most Gracious Sovereign to his Majesty's Principal Secretary of State for the Colonies to be laid at the foot of the Throne.

5th. Resolved / moved by Dr. Burnside, seconded by Robert Baldwin Esquire/ That from the manner in which the Rt. Hon. Viscount Goderich, then his Majesty's Principal Secretary of State for the Colonies, received the petitions of the people of this Province on the Alien Bill, and recommended them to the favourable consideration of our beloved Sovereign, he has rendered himself deservedly dear to the people of the British Dominions and has taught them to regard him as one to whom in the time of trouble and political danger they might confidently look up as a firm asserter of their rights and a generous protector of their just interests.

6th. Resolved / moved by Dr. Burnside seconded by Robert Baldwin Esquire/ that the Committee do therefore transmit the petition addressed to the House of Lords to the Right Honourable Viscount Goderich, with a request that he would present it to that August House and support its prayer with his talents and influence.

7th. Resolved/moved by Dr. Burnside seconded by Mr. Johnson/that from the liberal sentiments expressed and the just views of Colonial policy taken by the Honorable Edward Stanley Esquire in his speeches in the Imperial House of Commons, we are led to entertain an earnest hope, that he will be amongst the most vigilant and firm as he has been amongst the most able supporters of our rights and privileges.

8th. Resolved / moved by Dr. Burnside seconded by Mr. Johnson / that the Committee do therefore transmit the petition addressed to the Imperial House of Commons to the Honorable Edward Stanley, Esquire, with a request that he would present it to that House and support the prayer with his talents and influence.

9th. Resolved/moved by Mr. Ketchum seconded by Mr. Wilson/That alive to every grateful feeling for those warm expressions of interest, for the rights of British subjects in distant Colonies which so frequently and happily pervade the British Senate, we necessarily place great reliance for the support of our petition, on the judgment, prudence and the talents of Sir James Mac.Intosh and Joseph Hume Esquire, whose vigorous wisdom and eloquence have given life as it were to those expressions so claiming our gratitude.

10th. Resolved / moved by Mr. Ketchum seconded by Mr. Wilson / That the Committee do therefore enclose to each of those Gentlemen a copy of the petition with a request for his support.

11th. Resolved / moved by Dr. Morrison seconded by Robert Baldwin Esquire / That at a time when we are about laying our complaint before the Imperial Parliament; and are soliciting the aid of the talents and influence of members of that august body in procuring us redress, the recollection of those obligations which we and the Empire at large owe to the Right Honorable Charles James Fox, for his noble exertions in defence of Colonial rights, at a time when those rights were generally so imperfectly understood, leads us to turn with confidence to the present head of his illustrious House, inheriting, as he does, the liberal and enlightened principles of that great and lamented statesmen, as one to whom we in common with all others suffering from misrule and maladministration, have a peculiar right to look up for assistance and support.

12th. Resolved / moved by Dr. Morrison seconded by Robert Baldwin Esquire / that the Committee do therefore transmit a Copy of the petition to Lord Holland with a request of his support.

13th. Resolved / moved Robert Baldwin Esquire seconded Dr. Morrison / That from the generally enlightened views and liberal policy of the Rt. Honorable William Huskinson, we feel disposed to attribute his mistaken opinions as to the feelings and wishes, and constitutional rights of the people of this and our sister province to misinformation rather than to a desire to trench upon our rights or liberties and this we the more readily believe from his statement in the Imperial House of Commons, as reported in some of the public funds [sic], "That he believed the people of these provinces would readily acquiesce in the alteration of their constitution by the Imperial Parliament and on the raising of revenue on the Colonists, and the disposal thereof by act of that Parliament." in which opinion never was so able a politician more mistaken than that Rt. Hon. Gentleman as we hold it to be a principle never to be abandoned that our constitutional act as passed by the Parliament of Great Britain and as accepted and acted upon by us, is in a treaty between the Mother Country and us, her children of this Colony, pointing out and regulating the mode in which we shall exercise those rights which, independent of that act, belonging to us as British subjects, and which, therefore, neither the Parliament of the Mother Country, nor any other power upon earth could legally or constitutionally withhold from us: and that thus that act, being in fact, a treaty, can only be abrogated or altered by the consent of both the parties to it, that is to say, the Mother Country and the Colony.

14th. Resolved/moved by Robert Baldwin Esquire seconded by Dr. Morrison/ That the Committee do therefore transmit a copy of the petition to Right Honorable William Huskinson, with an assurance of the high respect which we entertain for his great talents and of the firm reliance which we place on his Honorable intentions; and that we have thus communicated our petition to him that he may see by the contents how far he has been misled by those who are equally enemies to his deservedly high political reputation, and to the rights, liberties, and best interests of his Majesty's faithful Subjects in these Colonies.

15th. Resolved/moved by Robert Baldwin Esqr–seconded by Mr. Ketchum/ That at this time, when from the misrule of Provincial administrations the question of Colonial policy has become so peculiarly important to the Empire at large, and the want of information as to the feelings and wishes, and inattention to the unquestionable [sic] of his Majesty's faithful Colonial Subjects, is likely to endanger that unbounded confidence which has hitherto been reposed in the Imperial Parliament, we feel a hope that Henry Brougham Esqr will not refuse us the aid of his splendid talents in support of our present remontrance [sic] and petition, from which support, we look for the more important results, as in addition to the advantage of being assisted & the energy and talent that so eminently distinguish that great man, colonial policy, in general has formerly occupied his attention and employed his pen.

16th. Resolved / moved by Robert Baldwin Esquire, seconded by Mr. Ketchum / That the Committee do therefore transmit a copy of the petition to Henry Brougham Esquire with request for his support.

17th. Resolved / moved by Mr. Crawford seconded by Robert Baldwin Esquire / That the Committee do also enclose copies of the petition to the Marquis of Lansdowne, Lord Redesdale and Lord King and request those noblemen to afford it their support.

18th. Resolved / moved by Dr. Morrison seconded by Mr. Ketchum / That the Committee do also enclose copies of the petition to the following members of the Imperial House of Commons and request them to afford it their support [viz] Henry Labouchere Esquire, Henry Bright Esquire, Henry Warberton Esquire the Honorable John S. Wortley, William, Jos. Denison Esquire, Sir Francis Burdett, Lord Milton, Lord Binning,[1] Alexander Baring Esquire, Mr. Alderman Wood, the Right Honorable Sturges Bourne, the Right Honorable R. W. Horton, the Right Honorable Thomas Wallace, Sir Charles Wetherell, Sir Nicholas Tindal, to Thomas F. Lewis, Chairman of the Committee on Canada affairs, and to others members of that Committee, and that they do likewise inclose copies of the petition to Charles Bosanquet Esqr. Chairman of the Canada Company, William Williams Esquire Deputy Chairman of the same and to the other Directors of that Company.

19th. Resolved / moved by Robert Baldwin Esquire, seconded by Dr. Morrison / That lest it might be imagined either by his Excellency the Lieutenant Governor, or by the present provincial administration that there was a wish to act in any but the most open and candid manner, the Committee notwith-

[1]Possibly Lord George Bentinck.

standing the publicity with which all our proceedings have been intended, do, before they forward the petitions to England transmit a copy of the proceedings of this meeting, to the private Secretary of the Lieutenant Governor, to be laid before his Excellency for his information and that of the provincial administration.

20th. Resolved / moved by Dr. Morrison seconded by Mr. Ketchum / That the subscription be forthwith entered into, and promoted for defraying the necessary expenses of the Committee.

21st. Resolved /moved by Dr. Morrison seconded by Mr. Ketchum / That John S. Baldwin Esquire be requested to act as Treasurer.

The business having been finished, Dr. Burnside was called to the chair, and the thanks of the meeting voted to the Chairman and Secretary after which the meeting dissolved.

Signed– W. W. BALDWIN
Chairman

HENRY S. SULLIVAN,
Secretary

York U. C.

15 Augt. 1828.

This day, at a General Meeting of the Constitutional Committee, appointed for the purpose of watching over the interests of the petitioners to his Majesty and the several other branches of the Imperial and Provincial Legislatures, for the redress of grievances, and of forwarding by such means as shall seem best calculated for that purpose, the great objects which the petitioners have in view. William Warren Baldwin Esquire M. P. was unanimously elected chairman of the Committee and Robert Baldwin and Thomas D. Morrison Esquires appointed Secretaries.

Signed W. W. BALDWIN
Chairman

ROBERT BALDWIN }
T. D. MORRISON }
Secretaries.

W. W. Baldwin to the Duke of Wellington.[1]

Upper Canada

York 3rd– January 1829–

My Lord Duke/

Although your Grace's name does not appear in the printed copy of the proceedings of the Committee of Petitioner herewith inclosed for your Grace's perusal, for obvious reasons presently to be mentioned yet agreably to the spirit and object of the Petition the Committee have since particularly directed me to address your Grace on the subject of their prayer to his Majesty and the

[1] *Q. 353, pp. 84-87.*

Imperial Parliament for redress of grievances– Your Grace will therefore I pray, excuse this obtrusion upon time so valuable–

At the time of the meeting mentioned in the inclosed minute, it was not known in Canada that his Majesty had placed the affairs of his Empire in your Grace's hands, but as soon as known here, the petitioners naturally and necessarily regarded you, Sir, with sentiments of the most solicitous hopes for your Graces consideration of their Complaints, and the cooperation of your high influence in procuring redress–

Your Grace will permit me to say, as instructed by the Committee in behalf of the petition, that if our fellow subjects in England imagined or apprehended that the generous splendour of Military fame had obscured in your Grace's mind the gentler generosity necessary to civil Government; your Grace will readily pardon us in this remote portion of the Empire for partaking with them a little share of such an apprehension; but with them your Grace may be assured, we cheerfully cast off all fear of the kind, and look forward with every hope that your Grace does feel for the Colonists now under your care, for, that your [sic] does–wisely and justly appreciate their rights, we have the most lively assurance in the Constitutional Sentiments lately expressed by your Grace (as we are informed) in the Imperial House of Lords in reply to Lord Calthorpe– "that you "wished it to be understood that the Colonial Legislature were independent, "that Government were aware when they proposed measures to the Colonial "Legislatures, that the Colonial Legislatures were fully competent to adopt "those measures, to modify those measures or reject them altogether– Having "that power Government could not force them, and if the Noble Lord wished the "Government at Home to force the Legislature, your Grace would tell him that "the Government at Home could not do it– We have no more the power of Gov- "erning the Colonies by Force than we have that of Governing the Mother "Country by force, they could only be governed as England was governed, by "laws enacted with the sanction of their own Legislature–"

Towards your Grace therefore as Head of His Majesty's Government it is most proper to be explicit and brief and [sic] the subject of these our Complaints– To the matter stated in the petition it need only be added, that while complaining of past and present evils, the great object sought is, not only to cut short those now existing but to prevent the recurrence of like in future– and upon the latter point I am desired by the Committee particularly to invite Your Graces thoughts to that principle of the British Constitution, in the actual use of which the Colonists alone hope for *peace Good Government* and *Prosperity* the pledge of the highly regarded statute the 31st– of his late Gracious Majesty; the principle alluded to is this, the presence of a Provincial Ministry / if I may be allowed to use the term/ responsible to the Provincial Parliament, and removable from Office by his Majesty's representative at his pleasure and especially when they lose the confidence of the people as expressed by the voice of their representatives in the Assembly; and that all acts of the Kings representative should have the character of local responsibility, by the signature of some member of this Ministry– It is obvious that the people would not wish any of the Judges to belong to this Ministry or Council of the Governor–

Your Grace will pardon us in offering such suggestions, but our distance from the protection of the Imperial Government affords such opportunities for misrule to creep in by little and little by steps so unobserved and with wounds so trifling that in detail they might seem almost unworthy of notice, yet in their accumulation tending to alarming results, first undermining and eventually overturning the confidence of the people in the Government of the Parent State–

I trust your Grace will permit me to add under the direction of the Committee the assurance to your Grace of the great anxiety with which the people look for His Majesty's disapprobation of the illegal removal of M[r] Justice Willis and the satisfaction with which they anticipate his restoration to his judicial functons in the Province.–

I have the honor to be
My Lord
With the highest respects
Your Grace's
Most ob[t]– and Hum[l] Serv[t]

/Signed/ W. W. BALDWIN
Chairman

CIVIL GOVERNMENT, UPPER CANADA.

MURRAY TO COLBORNE.[1]

N°– 2

DOWNING STREET

LONDON 29: Sept[r]. 1828.

SIR

I have the honor herewith to transmit to you the copy of a dispatch,[2] with it's enclosure, which I have addressed to Sir James Kempt administering the Government of Lower Canada. As this despatch explains the views of His Majesty's Government upon some topics of great importance, connected with the Government of Lower Canada, it has appeared to me necessary that you should be apprized of it's contents with the least possible delay. However widely the circumstances of the two Provinces may in some respects differ, there is so close a resemblance in the general principles and forms of their Government, & so intimate a relation between them, that no considerable measure which may be adopted in the one, can be without it's effect in the other.

Upon several of the subjects, however, noticed in my despatch to Sir James Kempt, it is unnecessary that I should make any observations to your Excellency; since those embarrassments which have grown out of the distinctions of Religion, & of Lineage in Lower Canada, do not exist in the Upper Province. I shall, therefore, confine myself, on the present occasion to the following topics. The

[1]*G. 64, pp. 83-100.*
[2]See *below p. 487.*
80423—31½

Revenue; The Clergy Reserves; Education The Executive & Legislative Councils; & the appointment of an Agent. These are subjects in which the two Canadas are both interested, and it will probably be found necessary, therefore, to act upon some common principle with regard to them in the two Provinces.

I do not find that the question of the Right of the Crown to the appropriation for the Public Service of the Revenue arising from the Statute 14. Geo. 3. Cap. 88., has ever been brought into question in Upper Canada. The Provincial Government, acting under Instructions from this Department, or in pursuance of Warrants from the Lords Commissioners of the Treasury, have applied this money to the Public Service without any claim having been put forward on the part of the House of Assembly to controul the appropriation. Your Excellency is aware that in Lower Canada the Assembly have not only disputed the right of the Crown as a mere abstract question, but have adopted strong practical measures towards establishing a controul over the appropriation of the whole of this Revenue. The cause of this distinction between the proceedings of the two Provinces, appears to have been, that in Lower Canada the Crown being unable to sustain the entire Public Expenditure had annually to apply for aid to the Assembly, and thus brought the whole of the Revenue & Expenditure virtually within it's cognizance. In Upper Canada, as I understand, the Revenue of the Crown has hitherto proved adequate to the support of the Civil Government, and of the administration of Justice; & no occasion has, therefore, arisen for Financial discussions of a similar nature between the Local Government & the House of Assembly.

On referring to my despatch to Sir James Kempt, it will be perceived that His Majestys Government has not acknowledged the right of the House of Assembly of Lower Canada to participate in the appropriation of the portion of the Revenue above alluded to, but has rather maintained, in conformity with the opinions of the Principal Law Officers of the Crown; that this is a duty confided to His Majesty by Parliament, & of which, without the previous sanction of Parliament, the Crown cannot divest itself.

It is impossible not to perceive, however, that discussions may arise in Upper Canada in regard to the method which has hitherto been pursued for appropriating this Revenue, and that Your Excellency may be pressed with claims to which Your Predecessors in Office have not been exposed. It is with a view to this contingency, that I have thought it peculiarly necessary to supply you with the Instructions given to Sir James Kempt upon this subject, that they may serve as a guide to yourself if necessary. And, in that case, you will make to the Legislative Council & House of Assembly a communication corresponding as closely as circumstances will admit to the Address which I have authorized Sir James Kempt to make to the Legislature of Lower Canada. But should the contingency above adverted to not

occur, no communication need of course to be made of the Instructions with which I have deemed it expedient that you should be furnished with reference to this subject.–

On the subject of the Clergy Reserves, I have to acknowledge the receipt of a despatch from Sir Peregrine Maitland dated the 12: of May, enclosing An Address from the House of Assembly to His Majesty, praying that the monies arising from the sale of Lands set apart in the Province for the support & maintenance of a Protestant Clergy, may be placed at the disposal of the Legislature of the Province, for defraying the expence of certain Public Works, for the internal improvement of the Country, & for the promotion of general education.

In this Address it is stated, that only a small proportion of the Inhabitants of the Province are Members of the Church of England, & that the University recently established under the Royal Charter will produce no practical benefit to the majority of the People, but will be regarded with distrust, in consequence of the peculiar privileges which it confers upon Members of the English Church. It is, therefore, desired that a new Charter may be granted upon more comprehensive principles.

Your Excellency will acquaint the House of Assembly that I have laid their Address before The King, and that I have it in command to convey, through you, to the House the expression of His Majesty's satisfaction in the assurances of loyalty & attachment to His person & Government which are contained in this Address. You will further assure them that His Majesty will at all times receive with the most serious attention, any representation which may be made to him by the Representatives of His faithful Subjects in Upper Canada in the Provincial Parliament assembled, for advancing the prosperity of this important and interesting portion of His Dominions.

Your Excellency is, however, aware, that the existing Acts of Parliament have placed in the hands of His Majesty's Government a very limited discretionary authority respecting the appropriation of the Clergy Reserves, or the proceeds arising from their sale. In case of it's being deemed proper, however, to bring the whole of this subject under the revision of Parliament, with a view to the amendment of the existing Statutes, it will be desirable that I should be provided with Returns from Your Excellency on the subject of the Clergy Reserves in Upper Canada, similar to those which I have directed Sir James Kempt to transmit to me with reference to the Reserves in the Lower Province.

It would be deservedly a subject of regret to His Majesty's Government, if the University recently established at York should prove to have been founded upon principles which cannot be made to accord with the general feelings & opinions of those for whose advantage it was intended. ———— I have observed that Your Predecessor in the Government of Upper Canada differs from the House of Assembly as

to the general prevelence [sic] of objections to the University, founded upon the degree of exclusive connection which it has with the Church of England. It seems reasonable to conclude, however, that on such a subject as this, an Address adopted by a full House of Assembly with scarcely any dissentient voices, must be considered to express the prevailing opinion in the Province upon this subject.

In the event, therefore, of it's appearing to you to be proper to invite the Legislative Council & Assembly to resume the consideration of this question, you will apprize them that their representations on the existing Charter of the University have attracted the serious attention of His Majesty's Government, and that the opinions which may be expressed by the Legislative Council and the House of Assembly on that subject, will not fail to receive the most prompt & serious attention.

I have further to acknowledge a despatch from Sir Peregrine Maitland dated the 15: of May last, enclosing an Address from the House of Assembly to His Majesty, praying that the Chief Justice of Upper Canada may no longer be a Member of the Executive Council; and that the Judges may be rendered independent both of the Crown and of the People.

I have had the honor to lay this Address before The King, which His Majesty has been pleased to receive very graciously.

I am, however, to observe to Your Excellency, that on the subject of the independence of the Judges, by which I presume is meant their being commissioned to hold Office during good behaviour, and not during pleasure, there are at this moment difficulties to which the Assembly may not perhaps have adverted. In a society so limited in numerical amount, so much dispersed over an extensive Territory, and so liable from its popular Institutions to be divided into parties, it would, I fear, be very difficult to provide any effective controul upon the conduct of a Judge who was totally exempt from all personal dependence. The wholesome restraint of public opinion, and even the dread of actual impeachment, might fail sometimes to have sufficient effect upon the mind of a Judge who should, under such circumstances, be actuated by an undue desire of popularity, or be ambitious of the unbecoming distinction, in his station, of figuring as the Leader of a Party. It is, however, with a view solely to the welfare of the Province, and to the impartial administration of Justice, that His Majesty's Government hesitates to remove from the Judges in Upper Canada their direct responsibility to the Crown. That responsibility will be enforced, however, only upon the most serious occasions; & a time may be expected to arrive when the proposed change in the Commissions of the Judges may very properly be made. But, for the present, I conceive, that the interests of the Province in this matter will be best consulted by postponing the proposed alteration.

With reference to the Chief Justice retaining his Seat in the Executive Council, Your Excellency will have the goodness to consider the instruction which I have conveyed to Sir James Kempt, upon the subject of Councils, as virtually addressed to yourself; and you will transmit to me a Report upon that question, embracing the several topics to which I have directed him to advert.

The House of Assembly of Upper Canada have not, so far as I am aware, expressed a wish for the appointment of an Agent in Europe. But if they should deem that measure expedient, you will acquiesce in their wishes, subject only to those conditions which I have required in my despatch to Sir James Kempt.

I have the honor to be
Sir,
Your most obedient
humble Servant

G. MURRAY

Major General
Sir JOHN COLBORNE K.C.B.
&c. &c. &c.

CIVIL GOVERNMENT, LOWER CANADA.

MURRAY TO KEMPT.[1]

Copy
N° 1.

DOWNING STREET

LONDON 29: Sept^{r}– 1828.

SIR,

Your Excellency has been selected by the King to assume the Government of Lower Canada at a period of unusual difficulty and importance.

It would be invidious, and for my immediate purpose it is not necessary, to investigate the causes of that discontent which has unfortunately so strongly manifested itself of late Years in the House of Assembly, but which, I am willing to hope, is not generally felt by the rest of His Majesty's Subjects in the Province. It is far more important to enquire by what means a good understanding can be reestablished between the different branches of the Legislature; and I am persuaded that no exertion will be spared by yourself to promote conciliation by measures in which the undoubted prerogatives of His Majesty, & the constitutional privileges of the House of Assembly will be equally respected.–

His Majesty has received too many proofs of the loyalty & attachment of His Canadian Subjects, to doubt their cheerful concurrence in every effort which Your Excellency may make to reconcile those differences, which must always be produced when extreme rights are insisted

[1]*G. 64, pp. 101-138.*

upon by either party; and he looks forward with hope to a period when, by the return of tranquillity, the Legislative Council & Assembly will be able to bestow their undivided attention upon the best methods of advancing the prosperity & developing the resources of the extensive & valuable Territories comprised within Your Government.

As I feel it, however, to be necessary that Your Excellency should as far as possible, be relieved from the responsibility attendant upon any measures to be adopted for the adjustment of the questions in controversy between the House of Assembly and your Predecessors in Office, it is the object of my present dispatch to communicate to you the views of His Majesty's Government upon different branches of this subject: & here it will be proper for me to remark, that as the complete settlement of the affairs of the Province cannot be effected but with the aid of Parliament, I shall confine myself at present to the discussion of those points alone which can no longer be left undecided without extreme disadvantage to the interests of the Province.–

Among the most material of these points the first to be adverted to is, the proper disposal of the financial resources of the Country; and with the view of obviating all future misunderstanding on this subject, I shall endeavor to mark out the limits within which your interference in this matter ought properly to be confined.–

The Acts of 1774, (14 Geo. 3 Caps. 83 & 88) and of 1791, (31 Geo. 3. Cap. 31) upon which the present constitution of the Canadas depends, have laid down many general Rules which, I need scarcely remark, no Authority but that of Parliament can relax. So long, therefore, as those Statutes remain in force, His Majesty's Government has no choice but to execute their Provisions according to that interpretation which they have received from Judicial decisions, or from the Official Reports of the Chief Law Officers of the Crown. I am precluded, therefore, for the present from enquiring how far it might be expedient that the duties raised under the Statute 14 Geo. 3. Cap. 88. should be directly controuled by the House of Assembly of the Province. The Law as interpreted by the highest authorities to which it has been possible to resort, imposes upon the Lords Commissioners of His Majesty's Treasury the duty of making that appropriation.

The proceeds of the above mentioned Duties, and of the Territorial Revenue of the Crown, with the produce of Fines, Forfeitures, & other incidents of that nature, appear to constitute, however, the only fund which His Majesty's Government can lawfully apply, at it's discretion, to the defraying the expences of the Civil Government, and those of the administration of Justice in the Province.– It is, therefore, to be understood, for the future, as a fixed and unalterable principle, that, with the exception of the Funds already mentioned, no part of the Public Revenue of Lower Canada must be applied to the Public Service, or to any object whatever, except in pursuance of an Act of Appropriation passed by the three Branches of the Local Legislature.

I am by no means insensible to the consequence which must, necessarily result from the recognition & the observance of this principle. So long as the Assembly is called upon to provide for, & to regulate any portion of the Public expenditure, it will virtually acquire a controul over the whole. If the entire charge of the Civil Government of the Province could be limited to the amount of the Crown Revenues, it might be possible to act without any dependence on the Assembly. But whether such a result would be desirable, or would be really conducive to the welfare of the Province at large, it is unnecessary for me to enquire. It is sufficient to say, that under the existing Law, the Executive Government of Lower Canada cannot be relieved from a state of virtual pecuniary dependence upon the Assembly by any Constitutional means, and methods of a different nature must not be resorted to.–

By the existing state of things, the Government of Lower Canada is placed in this peculiar situation, that the appropriation of a part of the Revenue applicable to its expences, is, by Act of Parliament, allotted to the Crown, which cannot divest itself of the duty imposed upon it by that Act, whilst, at the same time, a supplemental part of the Revenue of the Province, which is required to meet the expences of it's Civil Government, must be the result of a Vote of the House of Assembly, and that House acquires, necessarily, therefore, an indirect controul over the whole.–

The expediency of extricating the Government of Lower Canada from this difficulty, as also the means of effecting that object, should it be deemed advisable, is a matter for the discussion of Parliament.

But it is necessary to adopt some immediate decision for your guidance in the approaching Session of the Provincial Assembly, with reference to this important matter. I should be most unwilling to leave you in the very painful predicament of addressing that body in terms which might be considered unsatisfactory, from the uncertainty which they held out as to the future, or which might seem to convey a reflection on the measures of your Predecessors in the Government. And, as it would be very difficult for you, uninformed as you at present are, as to the intentions of His Majesty's Government, to select any language which might not be open to misconstruction, I have deemed it most expedient to prepare & to transmit to you the Draft which I have the honor herewith to inclose, of an Address to be made by yourself to both branches of the Legislature upon the subject of the Revenue for the Current Year.– This document will sufficiently indicate to you the present views & intentions of His Majesty's Government upon this subject– Your Excellency will either incorporate this passage into your Speech at the opening of the Session, or you will make it the subject of a Separate Address, as you may find most convenient.– You will further consider yourself at perfect liberty to make all such alterations in the particular expressions of the inclosed paper as may be requisite for the correction of any errors

as to matters of fact, into which I may possibly have fallen, adhering, however, to the general meaning & spirit of the language I have employed.–[1]

The complaints which have reached this Office respecting the inadequate Security given by the Receiver General, & by the Sheriffs, for the due application of Public Money in their hands, have not escaped the very serious attention of the Ministers of the Crown. The most effectual security against abuses of this nature would be to prevent the accumulation of Balances in the Hands of Public Accountants, by obliging them to exhibit their Accounts to some competent Authority at short intervals, and immediately to pay over the ascertained balance.– The proof of having punctually performed this duty should be made the indispensable condition of their receiving their Salaries, and of their continuance in Office.–

In the Colony of New South Wales, a regulation of this nature has been established under His Majesty's Instructions to the Governor of that Settlement, and it has been productive of great public convenience.– If a similar practice were introduced in Lower Canada for the regulation of the Office of Receiver General, & for that of Sheriff, the only apparent difficulty would be to find a safe place of deposit for their Balances.– I am however, authorized to state that the Lords Commissioners of His Majesty's Treasury will hold themselves responsible to the Province for any Sums which the Receiver General or Sheriff may pay over to the Commissary General.– Your Excellency, therefore, will propose to the Legislative Council & Assembly the enactment of a Law binding these Officers to render Accounts of their receipts at short intervals, & to pay over the Balances in their hands to the Commissary General, upon condition that that Officer shall be bound on demand to deliver Bills on His Majesty's Treasury for the amount of his receipts. I trust that in this proposal the Legislature will find a proof of the earnest desire of His Majesty's Government to provide, as far as may be practicable, an effectual remedy for every case of real grievance.–

A doubt having been suggested whether the Statute for regulating the distribution between the Provinces of Upper & Lower Canada of the duties of Customs collected at the Port of Quebec, had not been inadvertently repealed by the general terms of a later Act, that question has been set at rest by the Act of the last Session of Parliament, Statute 9 Geo. 4. Cap. 76. Sec. 26[2]. Upon this Subject, however,

[1]See *below, pp. 499-500.*

[2]Which reads "And be it enacted and declared, That nothing contained in an Act passed in the Seventh year of His Majesty's Reign, intituled *An Act to alter and amend the several Laws relating to the Customs,* did or doth repeal, or shall be construed to have repealed, so much of an Act passed in the Third Year of His Majesty's Reign, intituled *An Act to regulate the Trade of the Provinces of* Lower *and* Upper Canada, *and for other Purposes relating to the said Provinces,* as relates to the appointment of Arbitrators to determine the claims of the Province of *Upper Canada* upon the Province of *Lower Canada,* or as relates to the Powers and Duties of such Arbitrators, or to any Award to be made by them, or to the Payment of any Sum by them awarded, or to the Payment of Duties made payable under any Act or Acts of the Province of *Lower Canada* on the Importation of any Goods, Wares, or Commodities into the said Province." *Imperial Statutes at Large, 7 & 8 Geo. IV-10 Geo IV, v. 584.*

Your Excellency will understand, that His Majesty's Government have no desire that the interference of Parliament should be perpetuated, if the Provincial Legislatures can themselves agree upon any plan for a division of these duties, which may appear to them more convenient & more equitable: And on the whole of this subject His Majesty's Government will be happy to receive such information & assistance as the Legislative Council & Assembly of the Province may be able to supply.

The appointment of an Agent to indicate the wishes of the Inhabitants of Lower Canada, is an object of great apparent solicitude with the House of Assembly.– His Majesty's Government will cheerfully accede to the desire expressed by the House of Assembly upon this head. The Agent must be appointed as in Jamaica, & in other British Colonies, by name, in an Act to be passed by the Legislative Council & Assembly and approved by Your Excellency.– I am persuaded that the Legislature will not make such a selection as to impose upon you the painful & invidious duty of rejecting the Bill on the ground of any personal objection to the proposed Agent: & of course Your Excellency will not object to any Gentleman who will be resident in this Country, & whose Station in Society & established character may afford sufficient pledges for the honorable and upright discharge of his duty.

His Majesty's Government is further willing to consent to the abolition of the Office of Agent, as it is at present constituted; but it is trusted that the liberality of the House of Assembly will indemnify the present holder of this Office, to whose conduct in that capacity no objection appears ever to have been made.– Indeed, without some adequate indemnity being provided for him, it would not be compatible with justice to consent to the immediate abolition of his Office.–

There are many other important topics connected with the Government of Lower Canada to which my attention has been called; with reference to which, however, it is impossible for the Ministers of the Crown to adopt an immediate decision, for want of sufficient information.–

Among these subjects may be enumerated the mischiefs which are said to result from the system of tacit Mortgages effected by a general acknowledgment of a Debt before a Notary– the objectionable & expensive forms of Conveyancing said to be in use in the Townships– the necessity of a Registration of Deeds– & the want of proper Courts for the decision of causes arising in the Townships.– It is obvious that Regulations affecting matters of this nature can be most effectually made by the Local Legislature– Your Excellency will, therefore, direct their attention to the subjects which I have mentioned, as matters which require their early and most serious attention: & you

will afford every assistance in your power towards the elucidation of every question which may arise for discussion in the Legislature connected with any of these topics.

It is represented that the Statute 6 Geo. 4. Cap 59 for the mutation of Tenures has hitherto proved inoperative, in consequence of some deficiency in the instructions which were transmitted from this Office to Your Predecessor in the Government. I have not been able to learn what is the defect complained of in those Instructions; but as the subject is of great importance, Your Excellency will report to me whether any and what instructions remain to be given on the subject of this Act which would facilitate the proposed change of Tenure– what are the obstacles which have hitherto prevented the success of the measure, & in what manner those obstacles can be most effectually surmounted.–

I am very sensible of the great inconvenience which has been sustained owing to the large Tracts of Land which have been suffered to remain in a waste & unimproved condition, in consequence of the neglect or of the poverty of the Grantees.– It were much to be desired that the Laws in force in Upper Canada, for levying a tax upon Wild Land on which the Settlement duties had not been performed, were adopted also in the Lower Province; & Your Excellency will press this subject upon the attention of the Legislative Council and Assembly with that view.

Great dissatisfaction appears to have been expressed at the manner in which the Revenue of the Estates of the suppressed Order of Jesuits has been applied.– Upon this subject, however, I can procure no information sufficiently exact & copious to serve as the foundation for any definite opinion.– Your Excellency will, therefore, have the goodness to report to me what is the extent & value of these Estates –what is the gross average Annual Return from them– what are the deductions to which it is subject, & what is the average Nett income– & to what particular objects that income is applied. You will further Report, what are the methods at present adopted for applying the Revenue towards the education of Youth,– & whether by any change in those methods, the same end might not be answered more effectually, for the general benefit of the Province, & with more general approbation from the Inhabitants at large.– It will be fit also to consider whether the Revenue itself might not be encreased by a commutation of the Feudal Tenure, upon which, I apprehend, the Land to be at present held.–

The Constitution of the Legislative & Executive Councils is another subject which has undergone considerable discussion, but upon which His Majesty's Government must suspend their opinion, until I shall have received some authentic information from Your Excellency– You will, therefore, have the goodness to report to me whether it would be expedient to make any alteration in the general constitution of those Bodies; & especially how far it would be desirable to introduce

a larger proportion of Members not holding Offices at the pleasure of the Crown, & if it should be considered desirable, how far it may be practicable to find a sufficient number of persons of respectability of this description.–

The next topic upon which I must request Your Excellency to furnish me with information, is that of the Clergy Reserves. You are, of course, aware of the warm discussions to which this subject has given rise in Upper Canada; & with a view to some general adjustment of this question, it is necessary that I should receive as complete information as can be obtained as to the extent & value of these Lands– the means of most effectually & speedily rendering them a source of profit– the real extent of the inconvenience to which, by their means, the Settlers in their vicinity are exposed– the possibility of providing any equivalent & less objectionable mode of maintaining a Protestant Clergy– & the numerical proportion, as far as it can be ascertained which the adherents of the Churches of England & Scotland respectively bear to each other, & to other denominations of Christians in the Province.–

I have thus adverted in order to the various topics connected with the Government of Lower Canada, upon which I find that any dissension has recently arisen in that Province– One topic indeed, more material than any other may seem to have been omitted: I mean the inequality which appears to exist in the present system of Representation, & the practical exclusion of the Inhabitants of the Townships from all share in the Legislation of the Province.– This, however, is a subject on which I am unwilling to enlarge, because, without the assistance of Parliament, no effectual remedy can be applied; & the present discussion of the question, while it would answer no useful purpose, might tend to excite those feelings which it is my earnest desire to allay.– I confine myself, therefore to desiring that Your Excellency will inform me what would be the best principle upon which, in your judgment, the Province of Lower Canada could be divided, for the purpose of representation, supposing that division were now for the first time to be made; & what would be the probable effect of introducing into Lower Canada the Law respecting Representation which has been established in the Upper Province.

In concluding this Despatch, I would wish to impress upon Your Excellency, & thro' you upon the Members of the Provincial Government, & more especially upon the Executive & Legislative Councils, the necessity of cultivating a spirit of conciliation towards the House of Assembly, & of terminating, if possible, these dissensions with which the Province has been too long agitated. The first step towards effecting this desirable object must be an oblivion of all past jealousies, & that step will I trust lead to a cordial concurrence in all measures calculated to advance the common good, in whatever quarter such measures may happen to originate.– His Majesty relies, for the amicable adjustment of the various questions which have been so long

in duspute, [sic] upon the Loyalty & attachment hitherto evinced by His Canadian Subjects at large, & on that of their Representatives in the House of Assembly– upon the zeal & the upright intentions of the Members of Council, & upon your own wisdom & moderation, happily combined, also, with a long personal acquaintance with the Province which you have been appointed to govern. When the undivided attention of the Executive Government & Legislature shall be given to the advancement of the general interests of the Province, in a spirit of cordial cooperation, there is no reason to doubt that Lower Canada will rapidly advance in prosperity, & emulate ere long the most opulent and flourishing Provinces of the North American Continent.

I have the honor to be,
Sir,
Your Excellency's
Most obedient
humble Servant

(signed) G. MURRAY

Lieut. General
Sir James Kempt G.C.B.
&c &c &c

Endorsed

Despatch from Sir George Murray to Sir James Kempt forwarded 29th Septbr 1828.

Murray to Kempt.[1]

Secret and Confidential

Downing Street

London 29: Sept 1828.

Sir

In my despatch of this date No. 1. I have intentionally omitted all reference to one subject of great importance & delicacy connected with the administration of the Government of Lower Canada: I refer to the case of Mr– Papineau, & it is the object of my present communication to put Your Excellency into possession of the views of His Majesty's Government on that subject.

I shall not enter into any discussion of the objections made by your Predecessor to Mr– Papineau as Speaker of the House of Assembly.

It is not now open to the Local Government to retrace its' steps; nor am I prepared to recommend the abandonment of a right, which in theory at least it is important to maintain. There may not be wanting, however, persons disposed to urge the Assembly to extreme measures, and it may be proper, therefore, to advert to the possible case of the Assembly refusing again to present Mr– Papineau, or to present any other person as Speaker, for the Governor's approval, and thus carry into practice the maxim advanced during the recent controversy,

[1] *G. 17, pp. 276-282.*

that the approbation of a Speaker by the Crown is unnecessary, and that his right to his Office is complete without it.

Should the House of Assembly assert these extreme principles, the best mode of surmounting the difficulty & of setting the question practically at rest, without surrendering the rights of the Crown, must necessarily be left in a great measure to your own discretion. You may perhaps be able to persuade the House of Assembly to present M^r^– Papineau to yourself for acceptance, upon condition that the question of right shall be referred to His Majesty's Government for determination, or with the understanding that whatever may take place now shall not be drawn into a precedent, or prejudice the question of right in future times. If unfortunately every endeavour for a conciliatory adjustment of this question should be fruitless, & you should be driven to the alternative of either permitting M^r^– Papineau to sit without being accepted by the Governor, or of proroguing the Session, you will, in such an extreme case, announce to the Assembly, that you abstain from the exercise of the Royal Prerogative of prorogation merely in consideration of the serious inconvenience which the Province must sustain from the loss of another Session; and that although you will not interrupt their proceedings, you must be understood as entering your most solemn protestation against them, in favor of the rights of the Crown, & that it will remain for His Majesty's Government in England to take such steps for the vindication of those rights, as the exigency of the case may seem to them to require.

But although I have thought it necessary to allude to the possibility of difficulties arising, such as I have above adverted to, I am by no means disposed to regard as probable their actual occurrence. I am much more inclined to anticipate the prevalence of conciliatory feelings, in every branch of the Provincial Legislature, & to expect that the Assembly will, without hesitation, present their Speaker for the approval of the Governor according to the customary forms; & in that case Your Excellency will I conclude, confirm the choice of the Assembly.

It may be proper that I should take this opportunity of requesting Your Excellency to understand that my accompanying despatch No. 1 has been purposely written in such terms as to enable Your Excellency to communicate the substance of it to the two Houses of Legislature. If, however, there should appear to you to be any reason for withholding a general communication of it's contents, you can incorporate in a Message such parts of it as you may think proper to be communicated for the information of both Houses; The address upon the subject of the Revenue contained in the Draft which I have sent to you must of course in any event be made public, I need scarcely remark that for reasons which must be sufficiently obvious to Your Excellency, my present despatch must be considered, in the strictest sense, secret & confidential.

I have the honor to be
Sir
Your Excellency's
most obedient
humble Servant

G. MURRAY

Lt. General
Sir JAMES KEMPT G.C.B.
&c. &c. &c.

KEMPT TO MURRAY.[1]

Confidential

CASTLE OF ST LEWIS

QUEBEC 22nd. November 1828.

SIR,

In my Dispatch of the 3rd. Instant communicating to you my having been under the necessity of issuing a Proclamation for the convening of the Legislature of this Province on the 21st– of this Month, I took occasion to advert to the difficulties that were likely to occur, in respect to the Question which occasioned the sudden Prorogation of the Provincial Parliament in Novr. last year, and to state to you the impression which I entertained on the subject, and the course which I should endeavour to follow in the event of my not receiving Instructions from you upon a matter of so much delicacy & importance.

It was a great satisfaction to me therefore to receive on the 11th Instant your secret and confidential letter of the 29th. of September, communicating to me the views of His Majesty's Government in the case of Mr– Papineau, and to find that they so nearly corresponded with the opinion which I had ventured to express to you in my Dispatch of the 3rd. Instant.

Mr. Papineau arrived here from Montreal on the 18th, and, on his waiting on me to pay his respects, I entered into conversation with him upon the subject of his case, telling him very frankly that I should have no hesitation in approving of the person (whoever he might be) that was duly elected by the House of Assembly to be its Speaker, but, that I could not consent to any infringement of His Majesty's Rights, or to any departure from the usual Parliamentary forms observed on similar occasions.

His reply was, I am the Speaker *Elect* of the Assembly, altho' not yet approved of by His Majesty's Representative, and the House conceive that they have an undoubted Right to come up with their Speaker *Elect,* when sent for at the opening of the Session, and to present him for Your Excellency's approbation.

Such a course I observed would be unparliamentary, and an infringement of His Majesty's Rights, inasmuch as His Majesty's Representative had disapproved of the Speaker chosen by the House of Assembly at the last Meeting of the Legislature, and that, altho' His Excellency had commanded the House to proceed to a new Election of a Speaker, I apprehended that the Prorogation, which took place on the following day, had put an end to all proceedings then unfinished.

Mr– Papineau assured me that the Assembly entertained a very different opinion;– The Prorogation did not, they conceived, put an end to the proceedings in *this* case; and, the House having re-elected him, they meant, as a continuation of their former Proceedings to bring up their Speaker *Elect,* and to present him for the Governor's approbation in the usual manner.

In that case, I observed, the House of Assembly would speak *first,* by addressing The Throne, on its coming up, a course of proceeding which I could not allow, under any circumstances, at the commencement of a Session, and, that

[1] *Q. 183, pp. 172-178.*

I conceived therefore, it would be better for all Parties that the whole Proceeding should commence de novo, the House coming up without a Speaker, and receiving the Commands of The King's Representative to elect one in the usual manner.

My endeavours to accomplish this were, however, ineffectual,– the Assembly never could, with honor or propriety, he said, undo its former proceedings, and, he added; it will indeed be a grievous thing for the Country if a Session should not take place.

I told him in answer to this last observation that, in the present circumstances of the Country, I had *too tender* a regard for the interests of His Majesty's Canadian Subjects to deprive them of the Advantages of a Legislative Session by any Act of the Royal Prerogative, but, that I should deem it my duty, in opening the Session, to enter my solemn Protest against any abandonment of His Majesty's Rights, which the Proceedings of the Assembly might tend to infringe.– Nothing, however, I said, but a strong sense of Duty to His Majesty would induce me to take such a course, and I requested him, therefore, to reconsider the matter and to come to me again on the following day,– it being my anxious desire to come, if possible, to some amicable arrangement, so that the Session might commence with good humour, and in the spirit of conciliation which His Majesty's Government had instructed me to promote by every Means in my power.

Mr. Papineau waited upon me accordingly the following day; he came, he said, with a sincere desire to make such an arrangement as would be acceptable to me, but that he really had nothing to propose that could remove the difficulties which unfortunately existed.

The case being a very unusual one and not likely again to occur, I conceived that I should be warranted, *under existing circumstances,* in deviating from the strict Rules of Parliament, in opening the Legislative Session, provided, that the *Rights of the Crown were fully and publicly acknowledged by the House of Assembly;* I accordingly proposed to Mr Papineau the course which has been followed, and in which I trust you will think that His Majesty's Rights have been fully preserved; He very readily acceded to it, and the arrangement having given, I believe, very general satisfaction both to the Legislative Bodies and the Public at large, I have only to express a hope that His Majesty's Government will approve of my Proceedings.[1]

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[1]In opening the session of 1825, the Speaker of the Legislative Council had addressed the Assembly in these words "I am commanded by His Excellency the Lieutenant Governor to inform you that His Excellency does not think fit to declare the causes for which he has summoned this Provincial Parliament, until there be a Speaker of the House of Assembly." They were then ordered to proceed to such an election and to present "the person who shall be so chosen to His Excellency, in this House on Monday next, at Two o'clock, for his approbation." (*Journals of Assembly, Lower Canada, 1825, pp. 9-10*). On this occasion the Speaker of the Legislative Council said. "I am commanded by His Excellency to inform you that he does not see fit to declare the causes for which he has summoned this Provincial Parliament, until there be a Speaker of the Assembly duly elected and approved; and I am therefore further commanded to enquire whether you have proceeded to the election of the Speaker, and if you have upon whom your choice has fallen.

"Whereupon Mr. Speaker elect said,

"May it please your Excellency,

"The House of Assembly has proceeded, in obedience to His Majesty's commands, to the election of a Speaker, and I am the person upon whom their choice has fallen, I respectfully pray that it may please your Excellency to give your approbation to their choice." (*Ibid, 1828-29, p. 9.*)

It had not been usual for some time past for the Speaker Elect to ask for the Governor's approbation in *direct terms,* but I thought it right on the present occasion to insist on the literal and strict observance of this Form, as you will see by the inclosed Paper which I have drawn up for the Purpose of shewing you the Proceedings observed in 1825, when Sir Francis Burton administered the Government, and those which have been followed on the opening of the present Session.

I have the honor to be
Sir
Your most Obedient
Humble Servant

JAMES KEMPT

The Right Honorable
Sir GEORGE MURRAY G.C.B.
&c &c &c

KEMPT TO ASSEMBLY, LOWER CANADA, 28 NOVEMBER, 1828.[1]

Relating to various subjects:

His Excellency the Administrator of the Government, avails himself of the earliest opportunity of conveying to the Assembly the following communication, which he has received The King's commands to make to the Provincial Parliament.

In laying the same before the Assembly, His Excellency is commanded by His Majesty to state, that His Majesty has received too many proofs of the loyalty and attachment of His Canadian subjects, to doubt their cheerful acquiescence in every effort which His Majesty's Government shall make to reconcile past differences, and he looks forward with hope, to a period, when, by a return of harmony, all branches of the Legislature will be able to bestow their undivided attention on the best method of advancing the prosperity, and developing the resources, of the extensive and valuable territories comprised within His Majesty's Canadian Provinces.

With a view to the adjustment of the questions in controversy, His Majesty's Government has communicated to His Excellency its views on different branches of this important subject, but, as the complete settlement of the affairs of the Province cannot be effected but with the aid of the Imperial Parliament, the instructions of His Excellency are at present confined to the discussion of those points alone, which can no longer be left undecided, without extreme disadvantage to the interests of the Province.

Among the most material of those points, the first to be adverted to, is the proper disposal of the financial resources of the country, and, with the view, of obviating all future misunderstanding on this matter, His Majesty's Government have prescribed to His Excellency, the limits within which his communications to the Legislature, on this matter, are to be confined.

[1] *Journals of Assembly, Lower Canada, 1828-29, pp. 28-31.*

Adjustment of the pecuniary affairs of the Province.

His Excellency is commanded by His Majesty to acquaint the Assembly, that the dissensions which have occurred for some years past between the different branches of the Legislature of this Province, respecting the appropriation of the Revenue, have engaged His Majesty's serious attention, and that he has directed careful enquiry to be made, in what manner these quetions [sic] may be finally adjusted, with a due regard to the prerogative of the Crown, as well as to their constitutional privileges, and to the general welfare of His faithful subjects in *Lower Canada*.

His Excellency is further commanded to state, that the Statutes passed in the fourteenth and thirty-first years of the Reign of His late Majesty, have imposed upon the Lords Commissioners of His Majesty's Treasury, the duty of appropriating the produce of the Revenue granted to His Majesty by the first of these Statutes, and that, whilst the law shall continue unaltered, by the same authority by which it was framed, His Majesty is not authorized to place the Revenue under the control of the Legislature of this Province.

The proceeds of the Revenue arising from the Act of the Imperial Parliament, fourteenth *George* The Third, together with the sum appropriated by the Provincial Statute thirty *George* the Third, and the Duties levied under the Provincial Statutes forty-first *George* the Third, chapters thirteen[1] and fourteen,[2] may be estimated, for the current year, at the sum of Thirty-four thousand seven hundred pounds.

The produce of the Casual and Territorial Revenue of the Crown, and of fines and forfeitures, may be estimated, for the same period, at the sum of Three thousand four hundred pounds.

These several sums, making together the sum of Thirty-eight thousand one hundred pounds, constitute the whole estimated Revenue, arising in this Province, which the law has placed at the disposal of the Crown.

His Majesty has been pleased to direct that, from this collective Revenue of Thirty-eight thousand one hundred pounds, the salary of the Officer administering the Government of the Province, and the salaries of the Judges should be defrayed: But His Majesty, being graciously disposed to mark, in the strongest manner, the confidence which he reposes in the liberality and affection of his faithful Commons of this Province, has been pleased to command His Excellency to announce to the Assembly, that no further appropriation of any part of this Revenue will be made, until His Excellency shall have been enabled to become acquainted with their sentiments, as to the most advantageous mode in which it can be applied to the Public service; and, it will be gratifying to His Majesty, if the recommendation made to the Executive Government of the Province, on this subject, shall be

[1]An Act for granting to His Majesty, a Duty on licencing billiard tables for hire.
[2]An Act for granting to His Majesty certain new duties on tobacco and snuff and disallowing the drawback upon tobacco manufactured in the Province.

such as it may be able, with propriety, and with due attention to the interests and efficiency of His Majesty's Government, to adopt.

His Majesty fully relies upon the liberality of His faithful Commons of *Lower Canada,* to make such further provision as the exigencies of the Public Service of the Province (for which the amount of the Crown Revenues above mentioned may prove inadequate) may require.

The balance of money in the hands of the Receiver General which is not placed, by law, at the disposal of the Crown, must await the appropriation which it may be the pleasure of the Provincial Legislature to make.

His Excellency is further commanded by His Majesty to recommend to the Assembly the enactment of a law for the indemnity of any persons, who have heretofore, without legal authority, signed, or acted in obedience to, the warrants for the appropriation, to the public service, of any unappropriated monies of this Province: and His Majesty anticipates that they will, by an acquiescence in this recommendation, shew that they cheerfully concur with him in the efforts which he is now making for the establishment of a permanent good understanding between the different branches of Executive and Legislative Government.

The proposals which His Excellency has been thus instructed to make for the adjustment of the pecuniary affairs of the Province, are intended to meet the difficulties of the ensuing year, and he trusts they may be found effectual for that purpose.

His Majesty has, however, further commanded His Excellency to acquaint the Assembly, that a scheme for the permanent settlement of the financial concerns of *Lower Canada,* is in contemplation, and His Majesty entertains no doubt of such a result being attainable, as will prove conducive to the general welfare of the Province, and satisfactory to His faithful Canadian subjects.

Securities of Public Officers.

The complaints which have reached His Majesty's Government respecting the inadequate security heretofore given by the Receiver General and by the Sheriffs for the due application of the public monies in their hands, have not escaped the very serious attention of the Ministers of the Crown.

It has appeared to His Majesty's Government, that the most effectual security against abuses in these departments would be found in enforcing, in this Province, a strict adherence to a system, established under His Majesty's instructions in other Colonies, for preventing the accumulation of balances in the hands of Public Accountants, by obliging them to exhibit their Accounts to a competent authority, at short intervals, and immediately to pay over the ascertained balance into a safe place of deposit; and in order to obviate the difficulty arising from the want of such place of deposit in *Lower Canada,* His Excellency is authorized to state, that the Lords Com-

missioners of His Majesty's Treasury will hold themselves responsible to the Province for any sums which the Receiver General or Sheriffs may pay over to the Commissary General; and His Excellency is instructed to propose to the Assembly the enactment of a law, binding these Officers to pay over to the Commissary General such balances, as upon rendering their accounts to the competent authority, shall appear to be remaining in their hands, over and above what may be required for the current demands upon their respective offices: such payments being made on condition that the Commissary General shall be bound, on demand, to deliver Bills on His Majesty's Treasury for the amount of his receipts.

Distribution of Duties between Upper and Lower Canada.

His Excellency is further instructed to acquaint the Assembly, that, although it was found necessary by an Act passed in the last Session of the Imperial Parliament ninth *George* Fourth, chapter seventy-six, section twenty-six, to set at rest doubts which had arisen whether the Statute for regulating the distribution between the Provinces of *Upper* and *Lower Canada,* of the Duties and Customs collected at *Quebec,* had not been inadvertently repealed by the general terms of an Act of a later date, His Majesty's Government have no desire that the interference of Parliament in this matter, should be perpetuated, if the Provincial Legislatures can themselves agree upon any plan for a division of these Duties which may appear to them more convenient and more equitable; and, on this whole of the subject, His Majesty's Government will be happy to receive such information and assistance, as the Assembly of this Province may be able to supply.

Agent.

The appointment of an Agent in England to indicate the wishes of the inhabitants of *Lower Canada,* appearing to be an object of great solicitude with the Assembly, His Majesty's Government will cheerfully accede to the desire expressed by the Assembly upon this head, provided that such Agent be appointed, as in other British Colonies, by name, in an Act to be passed by the Legislative Council and Assembly, and approved by the Executive Government of the Province; and His Majesty's Government are persuaded that the Legislature will not make such a selection as to impose on the Government the painful and invidious duty of rejecting the Bill on the ground of any personal objection to the proposed Agent.

His Majesty's Government is further willing to consent to the abolition of the office of Agent; as it is at present constituted, but it is trusted that the liberality of the Assembly will indemnify the present holder of this office, to whose conduct in that capacity no objection appears ever to have been made; indeed without some adequate indemnity being provided for him, it would not be compatible with justice to consent to the immediate abolition of his office.

Tax upon wild lands.

His Majesty's Government being very sensible of the great inconvenience which has been sustained, owing to the large tracts of land which have been suffered to remain in a waste and unimproved

condition, in consequence of the neglect or the poverty of the grantees, it has appeared to His Majesty's Government to be desirable that the laws in force in *Upper Canada,* for levying a tax upon wild land, on which the settlement duties had not been performed, should be adopted in this Province; and His Excellency is instructed to press this subject on the attention of the Assembly with that view.[1]

Mortgages, Register Offices and Courts.

The attention of his Majesty's Government has also been drawn to several other important topics; among which may be enumerated, the mischiefs which are said to result from the system of tacit mortgages, effected by a general acknowledgment of a debt before a Notary; the objectionable and expensive forms of conveyancing said to be in use in the Townships;– the necessity of a registration of Deeds, and the want of proper Courts for the decision of causes arising in the Townships. Regulations, affecting matters of this nature, can obviously be most effectually made by the Provincial Legislature, and His Excellency is commanded to draw the attention of the Assembly to these subjects, as matters requiring their early and most serious attention.

In conclusion, His Excellency has been commanded to state, that His Majesty relies for an amicable adjustment of the various questions which have been so long in dispute, upon the loyalty and attachment hitherto evinced by His Majesty's Canadian subjects, and on that of the Provincial Parliament, and that His Majesty entertains no doubt of the cordial concurrence of the Assembly in all measures calculated to promote the common good, in whatever quarter such measure may happen to originate.

Castle of Saint Lewis,
28*th November,* 1828.

Resolutions of Assembly, Lower Canada, 6 December, 1828.[2]

1. *Resolved,* That it is the opinion of this Committee, That this House has derived the greatest satisfaction from the gracious expression of His Majesty's beneficient views towards this Province, and from the earnest desire of His Excellency the Administrator of the Government, to promote the peace, welfare and good government of the Province, as evinced in His Excellency's Message of Friday last.

2. *Resolved,* That it is the opinion of this Committee, That this House has, nevertheless, observed with great concern, that it may be inferred from the expression of that part of the said Message which relates to the appropriation of the Revenue, that the pretention put forth at the commencement of the late Administration, to the disposal of a large portion of the Revenue of this Province, may be persisted in.

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[1] An interesting report on this subject is to be found in *Upper Canada, State Book, G., pp. 348-356.* (12 January, 1824.)

[2] *Journals of Assembly, Lower Canada, 1828-29, pp. 107-109.* These Resolutions were made in response to Kempt's Message of 28 November.

3. *Resolved,* That it is the opinion of this Committee, That under no circumstances, and upon no considerations whatsoever, ought this House to abandon or in any way compromise, its inherent and constitutional right, as a Branch of the Provincial Parliament representing His Majesty's Subjects in this Colony, to superintend and controul the receipt and expenditure of the whole Public Revenue arising within this Province.

4. *Resolved,* That it is the opinion of this Committee, That any Legislative enactment in this matter by the Parliament of the United Kingdom, in which His Majesty's Subjects in this Province are not and cannot be represented, unless it were for the repeal of such British Statutes or any part of British Statutes, as may be held by His Majesty's Government to militate against the Constitutional Right of the Subject in this Colony, could in no way tend to a settlement of the affairs of the Province.

5. *Resolved* That it is the opinion of this Committee, That no interference of the British Legislature with the established Constitution and Laws of this Province, excepting on such points as from the relation between the Mother Country and the *Canadas,* can only be disposed of by the paramount authority of the British Parliament, can in any way tend to the final adjustment of any difficulties or misunderstandings which may exist in this Province, but rather to aggravate and perpetuate them.

6. *Resolved* That it is the opinion of this Committee, That in order to meet the difficulties of the ensuing year, and to second the gracious intentions of His Majesty for the permanent settlement of the Financial concerns of the Province, with due regard to the interests and efficiency of His Government, this House will most respectfully consider any Estimate for the necessary Expenses of the Civil Government for the ensuing year, which may be laid before it, confidently trusting that in any such Estimate a due regard will be had to that economy which the present circumstances of the country and its other wants require.

7. *Resolved,* That it is the opinion of this Committee, That on the permanent settlement before mentioned being effected with the consent of this House, it will be expedient to render the Governor, Lieutenant Governor, or person administering the Government for the time being, and the Judges and Executive Councillors, independent of the annual Vote of the House, to the extent of their present Salaries.

8. *Resolved,* That it is the opinion of this Committee, That although this House feels most grateful for the increased security against the illegal application of the Public Money, which must result from His Majesty's Government referring all persons who may have been concerned in such application, to an Act of Indemnity to be consented to by this House, it will be inexpedient to consent to any such Enactment till the full extent and character of such illegal applications may have been fully enquired into and considered.

9. *Resolved,* That it is the opinion of this Committee, That this House feels the most sincere gratitude for His Majesty's solicitude to effect the most perfect security against the recurrence of abuses on the part of persons entrusted with Public Monies in this Province.

10. *Resolved,* That it is the opinion of this Committee, That this House has not complained, nor have any complaints been made known to it, respecting the Arbitration for the Distribution between the Provinces of *Upper* and *Lower-Canada,* of the Duties collected in *Lower-Canada;* but that in this, as in every other respect, this House will most cheerfully co-operate in every equitable and constitutional measure which may be submitted to it, as desirable by the Inhabitants of *Upper-Canada.*

11. *Resolved,* That it is the opinion of this Committee, That this House has seen with sentiments of the highest satisfaction and gratitude, the declaration of the willingness of His Majesty's Government cheerfully to accede to the desires which the Assembly has so frequently expressed during the last twenty years, of having an Agent in *England,* to indicate the wishes of the Inhabitants of *Lower-Canada;* and that it is expedient to provide for such an appointment without delay.

12. *Resolved,* That it is the opinion of this Committee, That so soon as the scheme in contemplation of His Majesty's Government for the permanent settlement of the Financial concerns of the Province shall have been made known and considered, it may be expedient to provide some adequate Indemnity to such Persons as were placed on the Civil Establishment of this Province, with Salaries prior to the year one thousand eight hundred and eighteen, and whose offices may have been found to be unnecessary or require to be abolished.

13. *Resolved,* That it is the opinion of this Committee, That this House will cheerfully concur in any measure which may appear most likely to be successful in effectually removing the great inconvenience which has been sustained from the non-performance of the Duties of Settlement by grantees or holders of Land obtained from the Crown, and otherwise remove the obstructions to the Settlement of the Country, which may have resulted or may hereafter result from the manner in which the powers and superintendance of the Crown in this most essential particular as affecting the general prosperity of the Province, may have been exercised.

14. *Resolved,* That it is the opinion of this Committee, That it is the desire of this House to take as speedily as possible every means in its power that the Inhabitants of the Townships, upon a Subdivision of the Counties in which they are situated by Act of the Provincial Parliament, shall have a full and equitable Representation in this House, of persons of their own free choice, and that the House will cheerfully concur in every measure particularly interesting to the Townships, which may appear to be the most desirable to their Inhabitants and the most conducive to the general welfare.

15. *Resolved,* That it is the opinion of this Committee, That this House is fully sensible of the distinguished mark of confidence reposed in the loyalty and attachment hitherto evinced by His Majesty's Canadian Subjects and their Representatives in the Provincial Parliament, by His Majesty's declaration that he relies on them, for an amicable adjustment of the various questions which have been so long in dispute.

16. *Resolved,* That it is the opinion of this Committee, That amongst these questions not particularly mentioned on the present occasion, this House holds as most desirable to be adjusted and most essential to the future peace, welfare and good government of the Province, viz:

The Independence of the Judges and their removal from the political business of the Province.

The Responsibility and Accountability of Public Officers.

A greater independence of support from the Public Revenues, and more intimate connection with the interest of the Colony, in the composition of the Legislative Council.

The application of the late Property of the Jesuits to the purposes of general Education.

The removal of all obstructions to the Settlement of the Country, particularly by Crown and Clergy Reserves remaining unoccupied in the neighbourhood of Roads and Settlements, and exempt from the common burthens.

And a diligent enquiry into and a ready redress of all grievances and abuses which may be found to exist or which may have been petitioned against by the Subject in this Province, thereby assuring to all the invaluable benefit of an impartial, conciliatory and constitutional Government, and restoring a well founded and reciprocal confidence between the Governors and the governed.

EASTERN TOWNSHIPS.

Petition to Assembly, 3 December, 1828.[1]

Eastern Townships Petition.

A Petition of divers Inhabitants of the Eastern Townships, whose names are thereunto subscribed, was presented to the House by Mr. *Solicitor General,* and the same was received and read; setting forth. That after many years of disappointed expectation, the Inhabitants of the Townships again address themselves to the House in the full persuasion that the time is now arrived when they may confidently expect redress of their grievances, and relief from the disabilities under which they have for so long a period laboured: That they view with extreme pleasure the recommendation of the Committee of the Imperial House of Commons in favour of their Petitions for the enjoyment of a share of the Representation in the Assembly; for the establishments of Courts of Justice and of Circuits in the Townships, and for the enregistration of deeds and mortgages of Land; and they consider the Report of the Committee as affording the strongest confirmation of the propriety and justice of their pretentions, which have been so strongly and repeatedly urged upon the attention of the House. The Petitioners observed with great satisfaction the recommendation of the Committee, that the alterations that they suggest shall be subject of amicable arrangement within the Province: That they see in this measure a sacred and just regard to the principle of internal Legislature, independence in local matters, the greatest boon conferred on the Colony by the wisdom of the Imperial Parliament; and they trust that the

[1] *Journals of Assembly, Lower Canada, 1828-29, pp. 68-69.*

House, by granting their reasonable and just requests, will render unnecessary any future resort to the controlling power of the Imperial Legislature. The Petitioners, in asking for the enjoyment of the Law of *England* and other institutions which they consider useful and expedient for themselves, deem it necessary to repeat what they have always professed, that it was never their wish or intention to force upon their fellow subjects of French extraction any Laws which are disagreeable or distasteful to them; they simply request to be indulged in what they now enjoy, that is, the Laws and Institutions to which they have been accustomed, and which they comprehend and understand. The Petitioners confine themselves at present to entreating the House to take an early measure for granting to them those privileges alone which the Report of the Committee of the House of Commons has pronounced to be expedient to concede: First, The establishment of a competent Jurisdiction to try and decide Causes arising out of property held in Free and Common Soccage, according to the Law of *England*. Secondly, The institution of Circuit Courts within the Townships. Thirdly, That a Registration of Deeds relating to Free and Common Soccage Lands should be established; and that all mortgages thereon should be made Special. Fourthly, That a simple and cheap form of conveyance of Lands upon the principle of the Law of *England* should be selected and established by Law. Fifthly, That the Petitioners should be permitted to send a fair proportion of Representatives to the House of Assembly. The Petitioners refrain from asking for any amendment of the Road Laws and other minor regulations, trusting that their own Representatives in the Assembly may soon have the opportunity of bringing these matters under the notice of the House, and of conveying to the Assembly that knowledge of their wants and circumstances of which it has hitherto been so lamentably ignorant.

LIBEL CASES, LOWER CANADA.

Report of Attorney General, 20 October 1828.[1]

May it please Your Excellency,

I have been honoured with Your Excellency's Commands signified in M^r^. Secretary Cochran's Letter of the 21^st^ Sep^t^. requiring me to make a Report of the Prosecutions for Libel which have been instituted by me on the part of the Crown, since November last, and of the present state of the proceedings, together with any information deemed necessary for Your Excellency on this subject.–

In Obedience to Your Excellency's Commands, I have the honour to state, That all the Prosecutions referred to by Your Excellency, have originated in Indictments found by the Grand Juries of the Districts of Quebec and Montreal respectively, and that the first three of them were instituted in a Court of Oyer

[1] *Lower Canada Sundries, S. 199, folio 24.* In consequence of the attempts at conciliation, these cases were dropped after the departure of Lord Dalhousie.

& Terminer and General Gaol Delivery held in the latter of these Districts, in November 1827.–

The adoption of any legal Proceedings to restrain the licentiousness in which some of the Conductors of Newspapers had indulged, had been long, and probably, in the estimation of the sober and discreet part of the Community, too long delayed.– It was not indeed 'till after it was evident, that the evil was greatly increased by this forbearance, and that a Check to it was urgently required, that a resort was had to legal measures, & for these the sanction of a Grand Jury was taken.–

Before this step was adopted, The Editors of these Papers with their auxiliary Contributors, not satisfied with the free, temperate discussion of public Measures. had erected themselves into Censors of the Government and of the Administration of Justice, and were in the habit of pronouncing Judgment erroneously against both in terms of indecent disrespect.– In these Publications, the conduct and measures of the Government and the proceedings of the Courts of Justice were grossly misrepresented & calumniated, and the acts of both, within the limits of their legal power, in most important Particulars, were held up to the Public as illegal and unconstitutional, and in such language as was calculated to invite opposition to their authority; while the Person at the head of the Government was openly aspersed, vilified and made the object of indecent personal attack. Of the urgent necessity of putting a Stop to such publications no doubt could be entertained, as Government, however leniently and justly administered, could not continue to subsist, if it could be thus perseveringly attacked with impunity. In this Country also, the injurious consequences to be apprehended from these Libels, it is fit to remark, were the greater, as the Mass of the Population are profoundly ignorant, and may easily, for this reason, be made to imbibe unfounded distrust and prejudices against the Government, under the influence of which they might be hurried into a Criminal opposition to its authority, or long retain a sense of wrong which was never done. That an extreme degree of hardihood had been acquired by the authors of these Libels will be considered as sufficiently evinced by the fact of their not having suspended publications of this description, even while a Criminal Court was sitting, to which they could be made immediately amenable.– It was during the Sitting of the Court of Oyer and Terminer, and at the place at which its Session was held, that the most offensive of the Libels now adverted to, were published, and some of them were even directed against the Court itself, containing the most Criminal misrepresentation of its proceedings, and arraigning its Justice without the Slightest reason.–

In order to make Your Excellency acquainted with the Libels selected for Prosecution, I shall beg leave to mention the Prosecutions in the order in which they occurred, and, for the libellous matter which has been the subject of prosecution, will refer Your Excellency to the annexed Appendix, in which a Copy of it will be found.–

The first of these Prosecutions is founded on an Article contained in the Canadian Spectator, a Newspaper Published at Montreal, of the 7^{t} Nov^{r}. 1827. for which an Indictment was found against M^{r} Waller, The Editor and M^{r}. Duvernay, the Printer of that Paper, in the Court of Oyer and Terminer and

General Gaol Delivery held there in that Month, and the matter charged as libellous in the Indictment will be found in the Extract N°. 1. in the annexed Appendix.– In Explanation of this Prosecution, it may be proper to observe, that the Editor of the Paper now referred to came hither from Ireland, some years since, and being afterwards in distressed circumstances, was hired to conduct this Paper, which has been, since its first establishment, the organ through which a Party acting in opposition to His Majesty's Government in the Provincial House of Assembly, has manifested its sentiments, and by which it has been supported. The Editor himself, is without stake or interest in the Country; The language he holds would seem to be the language of his Employers by whom he is paid, and altho' published in English, the Paper is intended to influence the Mass of the French Canadian Population through whom it's pernicious contents are made to circulate by infusion into French Papers, and by oral communication.– The Article was published a Short time before the expected meeting of the Provincial Legislature.– The "*Conciliation*" made mention of, and which is treated with so much Contempt, was the Conciliation of the three branches of the Legislature, and it was in relation to this anticipated Conciliation, that the writer gives vent to the *tirade* of virulent abuse which follows, and which terminates in giving the character of a "*nuisance*" to His Majesty's Colonial Government, – a brief and concentrated form of Libel, it must be admitted, quite intelligible to the most ignorant of the Persons for whose information it was intended and as applied to a Government still possessed of any efficiency I believe to be almost without example.– In using this disgraceful term, the Writer would seem to have sought, in a single Expression, to unite with the most offensive Libel a direct incitement to insurrection;– for if the Government were to be considered a "*nuisance,*" as represented by him, that Nuisance like every other Nuisance, it is fair to infer, was to be abated, and as if to render his meaning unambiguous, he immediately adds, that if the Country would co-operate with firm and decisive measures, it would be speedily extinguished.– Among the vague & general charges conveyed in this article against His Majesty's Government, admitting of no answer, is one of a specific nature, which, in a variety of insulting forms, had been before made in the same Paper, and could not fail to make a Strong impression on an ignorant Population– The Colonial Government is charged with reviving Military ordinances [1] against the plainest Rules of legal Construction. To render intelligible this gross Libel on the Government, it is necessary to mention, that in the 27 & 29th. Years of His late Majesty's Reign, two Ordinances were passed by the Legislature of the Country at that period, one of which is intituled "An Ordinance for better regulating the Militia of this Province, and rendering it of more general utility towards the preservation and security thereof," and the other of which is intituled "An Ordinance to explain & amend the first mentioned Ordinance." These ordinances were permanent laws for regulating the Militia of the Province, the operation of which, some years after, was suspended by several successive Statutes, containing a temporary repeal of them, and substituting, during the period of such temporary Repeal, other provisions in the Place of those contained in the Ordinances. The first of these Statutes was passed in the year 1794 and in the last in 1825. by which

[1] See *above p. 408.*

last Statute the temporary repeal of these Ordinances was continued to the 1st. of May 1827 and no longer.– At this period, by the expiration of the temporary repealing Statutes, the Ordinances revived, and again became the law by which the Militia was regulated. It was peculiarly fortunate for the peace and tranquillity of the Country that, in the absence of any other provisions, this revival took place, in as much as besides the ordinary Security conferred by a Militia Law, there is this peculiar benefit derived from it in this Province, That it furnishes Peace Officers throughout the Country Parishes, that is throughout the whole Province, with the exception of the Towns of Quebec, Montreal & Three Rivers, there being a Special provision of Law, by which Captains of Militia and officers of inferior Grade, are constituted Peace Officers & there being no other Peace Officers except in these three Towns.– Without a Militia Law, therefore, the Country at large would have been without the legal means of maintaining effectually its internal Tranquillity. The Government having, as it was its duty to do & as the public Safety and interest required, enforced these ordinances, as a part of the law of the land, a clamour against them was immediately raised by disaffected persons, who aware of the Salutary and necessary power with which they permanently armed the Government, were anxious to prevent the execution of them.– Among these Persons, the Editor of the Canadian Spectator, as the organ of the Party to which he belongs, rendered himself conspicuous, and it is with reference to these Ordinances, that he presumes to charge the Government " with reviving Military Ordinances against the plainest Rules of legal Construction " It is proper to add, that amidst the opposition which the Execution of the Ordinances Experienced, Some Militiamen having been fined for not attending the Reviews required by these laws, an action of Trespass was brought against the Officers by whom the fines were levied, for the express purpose, as the Public were informed by the Canadian Spectator and his associate Papers, of trying the validity of the Ordinances. This action has been since brought to issue, and upon this Question no Gentleman Could be found who was willing to compromise his Professional Character by maintaining the Ordinances not to be in force. The consequence has been that upon a hearing, at the instance of the Defendants, These Ordinances have been solemnly adjuged by His Majesty's Court of King's Bench, to have been in force from the 1st. May 1827. The period at which the last of the temporary repealing Statutes expired, and this decision it has not been attempted to impeach.–

The second of these Prosecutions is grounded on an article in the Canadian Spectator of the 3d. Novr. 1827: for which an Indictment was found against the same Individuals, as in the case of the former Prosecution, in the Court of Oyer & Terminer & General Gaol Delivery held at Montreal in that month; and the matter charged as libellous will be found in the Extract No. 2. in the annexed Appendix.– The enforcing of the Militia Ordinances, in this as in the Article already noticed, is made the ground of the imputations against the Government; And the Writer of this Article introduces a libellous Letter from Mr Thomas Lee to the Governor in Chief under the General Head "*Militia*". He prefaces this Letter by expressing his approbation of it, – by stating that the Doctrines propagated by His Majesty's Government should make all true British Subjects boil with indignation, by charging the Governor with having by his Proclamation or

General Order made Law & Military Law, & with defaming British Subjects because they declined obedience to Orders which were not law.– These disgraceful charges had no other foundation, than the execution of the Laws of the land which the Editor & Printer of the Newspaper now referred to had the hardihood to assure the Country were not laws. In the Letter of M^r^. Lee which follows these prefatory remarks, this individual insults the Person at the head of the Government, and the Government itself, by charging the Governor in Chief with issuing an illegal Militia Order, by imputing to him tyranny & oppression and also falsehood. And it is this Letter which the Canadian Spectator in the Article in question holds up to the Public in terms of high commendation as a very interesting document.–

The Third of these Prosecutions was occasioned by an Article proceeding from the Same Press, and contained in a News Paper called The "*Spectateur Canadien*" of the 14^th^ Nov^r^. 1827, for which an Indictment was also found by the Grand Jury in the same Court against James Lane, the Printer of that Paper.– Of this Article a Copy will be found in the Extract N° 3. in the annexed Appendix.– To convey an adequate idea of the malignity of this Libel, and of the total absence of all ground for the criminal charge it conveys against the Administration of Justice, it is necessary to state a few facts.– A new Street had been laid out at Montreal under the authority of the Magistrates there, & in Execution of the Provisions of the Road Act Prov. Stat 36 Geo: III. c. 9. After this Street had been laid out, a M^r^ Stanley Bagg, deriving an alledged Title from a Convent of Nuns called the Grey Sisters, thought proper to erect a Wooden building on it.– This being an obstruction of a highway, & a nuisance, it became the duty of the Surveyor of the highways, which office is filled by a M^r^. Viger, to remove it, in the manner prescribed by the 68^th^. Sect: of the same Road Act. M^r^. Viger having neglected to perform this duty, one or more orders of the Magistrates assembled in Special Sessions was made, enjoining on him the performance of it.– After one certainly and I believe two orders to the same effect, three Magistrates of their own mere authority, individually, & without any Special Sessions having been called to reconsider the subject, presume to issue a *Supersedeas,* as they called it, discharging M^r^. Viger from that duty which the Law had imposed on him, and which the Magistrates acting collectively in one or more Special Sessions had required him to perform. For this non-feasance of a duty required by a Statute, an Indictment was found against M^r^ Viger in the Court of Oyer & Terminer and General Goal Delivery already mentioned, and at the same time, an Indictment was found against M^r^. Bagg for a nuisance.– In the libellous Article now referred to, this proceeding, than which none more legal & unexceptionable could be adopted, is held up to the Public, or rather to the French Canadian part of it, as most unwarrantable, as involving an illegal assumption of Jurisdiction by the Court of Oyer and Terminer, over a subject belonging exclusively to a Civil Judicature, and as being "*une insulte & un outrage aux loix*".– for having permitted this Proceeding the Court is charged with forgetting & disregarding the best established principles of Law & Justice, the Country is represented to be in an alarming state. and it is said that the Citizens ought to tremble for the consequence!!– In order also to convey a charge of positive corruption, as one of the causes of this "Monstrous" Proceeding, the

Writer of the article adds "*Les Magistrats qui se trouvent blessés par ce Supersedeas sont du nombre des Grands Jurés, & le President de la Police Siege a cette Cour!!*" In a more enlightened Community the Writer of such an extravagant article would incur by it universal ridicule & contempt; and the very excess of its folly would preclude any public ill-consequence from it.– But it is not so in this Country, where, such is the ignorance which prevails among the People for whose edification this article was intended, the charge thus conveyed against the Administration of Justice would be gravely received, & a strong impression be produced by it. This article, independently of its libellous character, it is proper also to observe, was deserving of the most serious consideration under another aspect, as being a manifestation of a principle on which the Press from which it proceeded; habitually acts, that of misrepresenting and calumniating the Administration of Justice, whenever persons belonging to the Party by which it is supported are made obnoxious to Punishment for an infringement of the laws.– M^r^ Viger, The Road Surveyor, is intimately connected by relationship & otherwise with the Party by which the "*Spectateur Canadien*" is supported:– Hence no doubt the motive for misrepresenting the proceedings in question, with an Expectation also, it is not uncharitable to suppose that the Petit Jury, composed of illiterate persons, by whom the case was to be tried, would not be uninfluenced by this libellous misrepresentation.–

The fourth of these Prosecutions is derived from an Article contained in the Canadian Spectator of the 24^th^ Nov^r^. last, for which an Indictment was found against M^r^. Waller The Editor, & M^r^ Duvernay, The Printer of that paper, in His Majesty's Court of King's Bench held at Montreal in March last, & of which a Copy will be found in the Extract N°. 4. in the annexed Appendix.–

For the understanding of this Libel it is necessary to mention, that in the Court of King's Bench held at Montreal in September 1827. Indictments had been preferred against Several Persons for Perjury committed by them at an Election held at William Henry in the preceding month of July, by falsely swearing that they possessed the necessary qualification to entitle them to vote at that Election. These Indictments had been *ignored* by the Grand Jury of that Court & New Bills for the same offences were preferred before the Grand Jury of the Court of Oyer & Terminer & General Gaol Delivery held at Montreal in November 1827. by which latter Grand Jury these Bills were found. In the article now referred to, the not finding of the Bills in Sept^r^. is called "An Acquittal by the Country", & on this Ground the Court of Oyer & Terminer is impeached before the Public for having, it is said thus overturned the well known principle of the English law; according to which an acquittal by a Jury is a Protection against any further prosecution for the same Crime, and for having thereby determined that an individual is exposed to be prosecuted to infinity for an Offence of which he has already been acquitted by the Country. In addition to this libellous charge against the Court, the Grand Jury of the same Court (for having exercised a legal and Constitutional power in finding these Bills), is charged with having allowed themselves to be used *as an instrument,* The foreman is represented as a person unworthy of confidence, and all the members of the Jury, with the exception of five or six, are held up to Public obloquy, while these five or six are made the objects of Special commendation & eulogy, it

being Stated, " That their Characters private, and public, and the independent manner with which they opposed, though without Success, all these proceedings, made an honourable Exception in their favour, and obliged the Writer of the Article to distinguish them from the rest."– This Scandalous Libel on the Court & Grand Jury, by which the Court is made Criminal for permitting that which is the practice of every day, & by which the Proceedings of the latter, rendered secret under the obligation of an Oath, are disclosed, or professed to be disclosed, & are made the subject of disgraceful remark, must be referred to the Same motive which dictated that already noticed, with respect to the Prosecution of M^r^. Viger.– The Persons prosecuted for Perjury had voted for a Candidate supported by the Party by which the Canadian Spectator itself is supported.– On this Ground they were to be screened from Public Justice, & for this purpose Courts and Juries through whose power it was attempted to bring them to Justice, were to be calumniated for having entertained Prosecutions against Men, and were to be over-awed before Trial and Judgment.– I will only beg leave to add with respect to this Prosecution, that but only one of the Indictments for Perjury which was *ignored* by a Grand Jury in Sept^r^. 1827. & found by a Grand Jury in November following, has been tried since the Publication of this libellous Article, & on that Indictment the Party accused, one Joseph Claprood, was found Guilty by a Common Jury, on the clearest Evidence.–

The fifth & sixth of these Prosecutions has been occasioned by an Article contained in The Quebec Gazette of the 28^th^ Feb^y^. 1828, being a Newspaper published by Samuel Neilson at Quebec. For this article an Indictment was found against M^r^. Neilson, The Editor & Printer of the Paper, & another Indictment against M^r^. Charles Mondelet, by the Grand Jury in the Court of King's Bench held at Quebec in March last:– and a Copy of it will be found in the Extract N°. 5. in the annexed Appendix.–

This Prosecution differs from those of which an account has been given in a very important particular, that is, in what respects the means employed for the composition of the Libel, and for giving weight and effect to it.–

In the Prosecutions already noticed, the Libellous Articles proceeded from insulated individuals, expressing their sentiments individually: in this Prosecution The Libel proceeded from a number of Individuals invested with Public Authority, as Magistrates & Officers of Militia, & associated under the imposing name of a " *Constitutional Committee* ".– These Persons, being Officers of Militia, Erect themselves into a Tribunal for trying the validity of the Public Acts and orders of The Commander in Chief of the Militia, & pass sentence on them as in their wisdom seemed fit.– They assume to themselves all the form of a legally constituted body, and arraign the Conduct of the Commander in Chief in such terms as to imply in them a right of determining on it.– It is for the publication of a Libel proceeding from such a self constituted body, & conveyed in the form of Resolutions, of a Letter, & of a Speech, that this Prosecution was instituted. Of the grounds on which the exercise of the power complained of, took place I am ignorant, nor would it seem at all necessary to be informed of them, inasmuch as, whether right or wrong, it could never be canvassed & determined on by such a self constituted body as a " *Constitutional Committee* " without a Surrender of the powers incident to the Established Government. In the Resolutions & Letter, the conduct of the Commander in Chief is arraigned as being arbitrary & unjust,

& it is said by this Body of Militia Officers, that in their opinion "*cet allegué de la part de Son Excellence*" (Meaning the fact alledged by the Commander in Chief as the foundation of his General order) "*est entierement mal fondé*". In the Speech of The Commander in Chief is spoken of in the most disrespectful & indecent terms,– he is charged in offensive language with being guilty of a departure from truth, with being under the influence of absurd & tyrannical notions, & with making defamatory accusations not deserving of refutation; And the administration of the Government by him is represented as being influenced & directed by persons "*qui s'evertuent à la tromper & qui Sacrifient honteusement leur honneur & leurs droits pour encourager une oppression dont il n'y a jamais en d'exemple dans les Colonies angloises*"– Not satisfied with these terms of abuse, the orator immediately after characterizes the persons last spoken of, that is, the principal officers of His Majesty's Government, with whose advice the Governor is presumed to be assisted, as being a "*horde d'envahisseurs & de destructeurs (de volonté au moins) de nos droits,*" and represents two individuals then recently dismissed from their rank in the Militia as entitled to the glory "*de voir leurs noms inscrits sur le catalogue sans fin de victimes de leur devouement a la Cause Sacrée de la patrie*": In conclusion he charges the Commander in Chief, with a criminal & disgraceful abuse of the patronage of the Crown by stating that the persons on whom he conferred honours were those "*qui ne se les font prodiguer qu'en abjurant leur foi Politique, qu'en se declarant traitres à la patrie, & en fletrissant pour toujours un nom qui ne leur a été donné que pour y ajouter celui de vrai Canadien.*"–

The Seventh of these Prosecutions is grounded on an Article contained in the same Newspaper The Quebec Gazette of the 11th. March 1828. for which an Indictment was found against Mr. Neilson, The Printer and Editor of that Paper, in the same Term of The Court of King's Bench held at Quebec in March 1828. and of which a Copy will be found in the extract No. 6. in the annexed Appendix.–

In this Prosecution the Libel is of the same character as that last mentioned. The example set by the Constitutional Committee of Three Rivers in composing and publishing the Libel of which an account has been given, was too agreeable to the feelings of the turbulent and ill disposed elsewhere and too well calculated to answer their views not to be followed.– Other Meetings of similarly self-constituted bodies called "*Constitutional Committees*" were therefore held for a like purpose, and among these, a Meeting of the "*United Constitutional Committees*" of the Parishes of St. Gregoire, Becancour, Gentilly, and St. Pierre Les Becquets, the proceedings of which gave occasion to this Seventh Prosecution. At this Meeting the same assumption of the Forms of a legally constituted Public Body obtained, as in the case of its prototype at Three Rivers.– In the first Resolution it was declared, That the Meeting being composed of the *Majority of the Officers of the Third Battalion of the County of Buckinghamshire,* would immediately take into consideration the General Order of Militia which was complained of, and in the ten following Resolutions This Meeting of Militia Officers, assembled in that character, express in various forms of language their disapprobation of the conduct of the Commander in Chief, which they pronounce to be arbitrary and unjust– But the 6th. & 7th. of these Resolutions were particularly

deserving of attention.– By the 6th. they declared, "*Que les personnes qui acceptent des Commissions en remplacement de ceux qui ont été destitués sans cause legitime meritent l'improbation publique, & ne doivent être considérés que comme ennemis des Droits du Peuple.*" By the 7th. they declared "*Que les membres de cette Assemblée, formant la majorité des officiers du dit 3eme. Battaillon du Comté de Buckinghamshire ne pourront obéir qu'avec Mortification à la personne qui aura ordre de prendre le commandement du dt. Battaillon.*"– *The "Constitutional Committee"* of Three Rivers has passed Sentence on the Commander in Chief in what related to the General Order of which they had taken cognizance There [sic] *United Constitutional Committees* go a step further, They not only pronounce Judgment on the Commander in Chief in relation to the General Order taken under their special consideration, but by their 6th. Resolution they denounce *public odium* against Persons accepting Commissions in the place of persons removed, and by their 7th Resolution they sufficiently intimate a disposition not to yield obedience to such persons. Of the dangerous nature of the associations from which these Libels proceeded no person could doubt. They were evidently calculated to bring the authority of the Government into discredit and contempt, *and gradually to supplant it*.– But however Criminal may have been the views of a few individuals by whom this Seditious Machinery was put into motion, it is certainly due to the Country at large to remark that it was the work of a few persons only, and that the mass of the inhabitants was in no degree infected with the disloyalty that might be inferred from such proceedings in other Countries.– The necessity, nevertheless, of putting a stop to associations so pregnant with mischief was urgent, and this was effectually accomplished in this instance by restraining the Publication of their Proceedings in the Newspapers.– After the two last Prosecutions, of which an account has been given, the agency of Constitutional Committees in opposing the Government, & producing disorder, ceased.–

The Eighth of these Prosecutions is grounded on the publication of a Letter to the Governor in Chief signed "Charles Mondelet," inserted in the Quebec Gazette of the 12th Novr. 1827. for which an Indictment was found against Mr. Charles Mondelet in the Term of the Court of King's Bench held at Quebec in March 1828. and of which a Copy will be found in the Extract No. 7. in the annexed Appendix.–

The Example which had been set by Mr. Lee in obtaining notoriety by addressing an insulting Letter to the person at the head of the Government of which mention has been made, had already been followed in one or two instances, and as yet with impunity, When Mr. Mondelet, it would appear, became ambitious of the same distinction.– It was evident that unless this disposition received some check, no act of the Government disagreeable to an individual, could be adopted, without exposing the person at the head of it to be traduced & vilified in the form of a libellous Letter, and without, as a necessary consequence, subjecting the Government itself to disparagement and contempt.– It seemed necessary, therefore that this check should be applied in the Case of Mr. Mondelet, who, it was obvious, had taken Mr Lee's Letter for his model, and had improved on it, by rendering his own more offensively libellous.– In it Mr. Mondelet as Mr Lee had previously done, charges the Commander in Chief of the

Militia, in the most disrespectful terms, with enforcing Ordinances as Law which were not Law, & with issuing illegal orders of Militia.– In relation to M^r^. Mondelet's removal from a particular Division of Militia on the ground of non-residence, as compared with the cases of some other officers, he accuses His Excellency of gross partiality and observes "*Votre Conseil n'a craint ni pour lui même ni pour Votre Excellence la "reprobation publique" & le ridicule qu'une semblable contradiction meriteroit a son auteur.*" In another part of his Letter he observes, "*Si vous m'eussiez taxé qu'il plaise à Votre Excellence, de m'etre réfuse à l'execution de vos ordres généraux qui me semblent aussi illegaux que sont illégales, & non loix, les ordonnances que l'on assigne comme leur base, vous n'auriez pas pû a la verite, en justice, me demettre sans me donner l'occasion d'être entendu, mais au moins les formes de Votre ordre Général n'auroient pas en apparence choqué la raison & cet ordre n'auroit pas été aussi fortement l'objet du Ridicule &^c^.*" And towards the Conclusion of this Letter, he imputes unheard of tyranny to the Commander in Chief in the following terms,– "*En dernier analyse qu'il plaise à Votre Excellence, je me permettrai de vous dire, en usant du droit d'un sujet anglois, que Votre Conseil egare grandement Votre Excellence en la portant à commettre des actes qui devroient être inouis sous l'Empire Britannique, & dont Notre Colonie seule offre des Examples.*"–

The Ninth of these Prosecutions is grounded on the Publication of M^r^ Lee's Letter above mentioned, in The Quebec Gazette of the 29^th^ Oct^r^. 1827. for which an Indictment was found against M^r^. Neilson the Editor and Printer of that paper, by the Grand Jury in the Term of the Court of King's Bench held at Quebec, in March 1828. In explanation of this Prosecution it is sufficient to refer to what is above stated in relation to the second of these Prosecutions.–

The tenth of these Prosecutions is grounded on an Article contained in the Quebec Gazette of the 29^th^ Nov^r^. 1827. for which an Indictment was found against M^r^. Neilson, the Editor & Printer of that Paper, in the Term of the Court of King's Bench held at Quebec in March 1828.– and of which a Copy will be found in the Extracts N°. 8 in the annexed Appendix.– This Libel is an amplification of the two Libels which are the subjects of the third and fourth Prosecutions above mentioned, these two being blended and amplified in this.– Upon this Prosecution therefore, It is sufficient to refer to the explanations above given in relation to the third and fourth Prosecutions.–

On the part of the Crown all due diligence in bringing these several Prosecutions to Trial, has, I beg leave to state, been exerted.– The Indictments found at Montreal in November last, were brought by *Certiorari* into the Court of King's Bench, in the succeeding Term of March, and the Trial of Them was then moved for, but the Defendants represented that they were not ready to proceed to Trial, and succeeded in obtaining a postponement of it 'till the next Term held in September last.– On this last occasion the Trials did not take place on the days fixed for them, in consequence of a difference of opinion in the members of the Court respecting the manner of preparing the Lists from which the Special Juries for these Trials had been struck. They now stand over, therefore, to be had in the next Term which will be held at Montreal in the Month of March.– With respect to the Indictment found in the Court of King's Bench at Quebec in March last, they were found too late in the Term to admit of the

Trials being had in it.– In the last Term held at Quebec in September, The Multitude of Cases of Felony before the Court precluded the Trial of these misdemeanours, which were therefore permitted on the part of the Crown to stand over, and no application for the Trial of them was made on the part of the Defendants; so that these Cases also remain for Trial in the next Term of the Court of King's Bench which will be held at Quebec in March next.–

In addition to what has been stated respecting These Prosecutions, it would seem not to be foreign to the order of reference with which Your Excellency has honoured me, to notice briefly some steps which have been taken by the Persons indicted or some of them, in conjunction with their friends, to render abortive and defeat them.–

By the Minutes of the Evidence taken before The Committee of The House of Commons on the Civil Government of Canada, in the last Session of The Imperial Parliament, which have reached this Country, it appears that a Set of Resolutions were produced before the Committee by Mr. John Neilson, The Father of one of the persons indicted, purporting to be the Resolutions of "A Meeting of Land holders and other Proprietors composing the Committee appointed at the General Meetings of Proprietors held for the purpose of petitioning His Majesty & both Houses of Parliament against the present Administration of the Provincial Government and for furthering the said Petitions, assembled at the house of Louis Roy Portelance Esqr, in the City of Montreal, 17 April 1828,"– In which Resolutions these Prosecutions are made the Subject of grievance and complaint. Among the names of the Persons, by whom these Resolutions are alledged to be adopted, is that of Mr. Waller, the person against whom the first, second, & fourth of the Indictments above mentioned were found.– Whether these Resolutions were, or were not, adopted at Meeting composed of the persons whose names precede them, is a matter of some uncertainty.– These names render it probable, however, that they were so adopted, being the names generally of the known Supporters of the Papers which are the Subjects of Indictment, and probably of part of the Proprietors of them, whose acquiescence Mr. Waller would be likely to obtain in any statements he would submit to them on the subjects to which the Resolutions relate, and in particular to those declaring these Papers to have been void of offence.– The Resolutions themselves contain convincing intrinsic evidence of their being the production of Mr Waller himself, who has found it convenient to embody his sentiments and defence in these Resolutions.–He has evidently not neglected his own defence in them, for in the eleventh Resolution, this unauthorized Meeting of Individuals is made to contradict the Indictments found by the Grand Inquest of the District, & to declare the publications which the latter on their oaths pronounced to be seditious libels "to be innocent and praiseworthy," and "entirely free from anything prejudicial to the laws or to public order."– This mode of superseding the authority of the legal Tribunals of The Country, I cannot but take the liberty of remarking, is without precedent, and, if successful in this instance, must be destructive of all legitimate authority.– It does not belong to me to notice the charges contained in these Resolutions against the Governor in Chief Courts, Chief Justice, Sheriffs, Jurors, and other public Functionaries, all of whom it has entered into the views of the writer of these Resolutions, to traduce and vilify.– But as I am made

personally conspicuous in these charges, & am represented to have acted from improper motives, and to have discharged my official duty with undue severity, even oppressively, it seems fit that, in submitting to Your Excellency, this account of the Prosecutions complained of, I should exonerate myself from this foul imputation, by stating a few particulars.– It is insinuated, if not asserted, in these Resolutions, that in the institution of the Prosecutions in question, I have acted under the influence of personal feelings, from having concurred in advising the Militia Arrangements complained of.– My feelings as prosecuting Officer of the Crown must be a matter of indifference in relation to the truth or falsehood of Criminal Charges.– But the insinuation or assertion, such as it is, is entirely untrue, and has been hazarded at random as the other disgraceful imputations contained in these Resolutions have been, merely to bring discredit on individuals and public authority, and thereby render the Government itself odious.– Except in having advised the enforcing of the Militia ordinances as a part of the law of the land, it has not fallen within the Scope of my duty to have any thing to do with the Militia arrangements of the Country.– To appointments and dismissals I have been equally a Stranger.– I am also represented as a violent opponent of the Representative Body, but am at a loss to conceive on what ground, & equally so to perceive the bearing of this demerit on the Prosecutions complained of.– I am likewise charged with having proceeded "*in a vexatory and oppressive manner*" against M^r^ Charles Mondelet, of the Prosecutions against whom an account has been given.– This Charge depending on matter of fact is easily refuted.– It is said that M^r^. Mondelet ought to have been Prosecuted in the District in which he resides, and where his offence was committed.– Had the offences for which he has been indicted, been committed in the District of Three Rivers, This observation would have been true, and he could not have been prosecuted elsewhere. But he was indicted, *not* for writing or publishing Libels in the District of Three Rivers, In relation to which offences I was in possession of no evidence to enable me to prosecute him there, *but* for having published, and caused and procured to be published, certain Libels in the District of Quebec, in the Courts of which latter District only could these offences be cognizable. This Charge, therefore is utterly groundless.– But it is also said, That M^r^ Mondelet was put to inconvenience in travelling from Three Rivers to Quebec, to answer the Indictments against him *there*. This, certainly, is an unusual Complaint on the part of a person accused, particularly before his innocence has been ascertained by an acquittal. The inconvenience complained of is necessarily experienced by all persons who subject themselves to Criminal Accusations, and in making M^r^. Mondelet amenable to the Court of King's Bench at Quebec, The trouble of travelling hither on his part was unavoidable.– It is also said that M^r^. Mondelet and the Witnesses Subpoena'd from Three Rivers incurred personal danger in performing the Journey.– The route between Quebec and Three Rivers, The Great Highway of the Province, is known here (tho' it may not be known by persons in London for whose perusal M^r^. Waller's Resolutions were intended) to be free from danger to Travellers at all Seasons of the Year, as much so as a *promenade* in the Streets of Quebec and Montreal.– If, by any strange misadventure or accident, these persons should have incurred any risque, it must be considered as one of the Casualties to which men in every situation, even in those

the most secure, are liable, and for which it does not seem reasonable to make His Majesty's Attorney General responsible.– It is also represented that I have acted partially, in selecting for Prosecution, the Editors of one Class of News Papers only.– It has been my duty to prosecute those Persons by whom libellous attacks have been made on the Government, its Courts of Justice, and its Public Functionaries, for the purpose of bringing them into Contempt and disgrace in the minds of the People. If such attacks have been found in one Class of Papers only, as has been the case, it sufficiently accounts for my having prosecuted the Editors and Printers of these only. With the personal abuse of contending Editors, which it might have been prudent and proper on the part of their respective Employers to have restrained, but not affecting any department of the Government, I have had nothing to do.– The King's Courts of Justice have been open to all Persons aggrieved by such Libels, and it is their own fault, if they have not sought redress there, my ministry not being necessary in procuring for them that redress.– But it is trifling with the understanding of the Persons to whom such a Palliation is offered, to attempt to excuse gross Libels on the Government and its Courts of Justice, on the Ground that other Editors have published Libels on some other persons and on some other Things.– I will only beg leave to add, as a General Answer to the unfounded misrepresentations contained in Mr. Waller's Resolutions, respecting the conduct of these Prosecutions, that in laying the Indictments in question before the Grand Juries by which they have been found, I was and could only be influenced by a sense of duty, and in the several stages of these Prosecutions I have in no respect deviated from the Established Course of Practice, which is observed in other Criminal Prosecutions.– The Grand Juries by which the Indictments have been found have been composed of persons of the first respectability in the Districts of Quebec and Montreal, & have been returned in the same manner as other Grand Juries have been from the period of the Conquest downwards.– 'Till the Publications of the Libels of Mr. Waller and his associates, Juries so returned had discharged their duties without reproach, and no person had ever called in question the purity of the Administration of Criminal Justice.– In the desperate position in which Mr. Waller has placed himself, it is not surprizing that the Criminal Judicatures of the Country, however free from reproach, till reached by his malignity, should not be acceptable to him.– it is, indeed, not likely that he would be satisfied, otherwise than with a Judicature of his own Choice, or with no Judicature at all, and of these alternatives the last would probably be the most agreeable.–

I cannot conclude this report to Your Excellency, without respectfully deprecating the dangerous consequences to be apprehended to His Majesty's Government and the peace and tranquillity of the Province, from the course which has been pursued by Mr. Waller and his Associates, if it should be permitted to be successful.– This Course may be characterized in a few words.– The Governor of the Province, The Courts of Justice, Juries, and other principal Functionaries of His Majesty's Government have been grossly calumniated, traduced, & vilified.– Of these Grave offences the authors of them have been accused in legal form by the Grand Inquests of the Country.– Instead of meeting the charges against him in the Course prescribed by law, the principal delinquent, for the purpose of counteracting the legal proceedings had against him and his

associates, and in contempt of the authority of the Court in which the Accusations are pending, calls a Meeting of his friends and partisans, who pronounce him and his Co-delinquents innocent of the charges against them.– Under Colour of this Meeting he frames Resolutions, containing a specious misrepresentation of the Facts on which the Indictments have been found, and proclaims the falsehood of the Charges contained in them.– In these same Resolutions, the Principal Party accused, renews the calumnies he had previously published against the Government and the Administration of Justice, and on the Ground that these Calumnies are true presumes to decline the Jurisdiction of the Court before which he and his associates stand indicted, as being corrupt and unfit to try them.–

Whether the Execution of the Laws can be thus eluded or frustrated, is an important question to which the Attention of His Majesty's Government is necessarily called by the foregoing statement.– I shall not, I hope, be thought to take an improper liberty, if I presume to express my humble Conviction, that if impunity can be obtained by so unprecedented a Course of proceeding, the consequences thence resulting must be a General Contempt of the legal Tribunals of the Country, and an utter inability on the part of His Majesty's Colonial Government to assert its authority, & maintain Peace and good Order.–

All which nevertheless, is most respectfully submitted to Your Excellency's Wisdom by Your Excellency's

Most Obedient
humble Servant
(Signed)

J STUART
Atty: General.

QUEBEC
20th. October 1828.

WOMAN SUFFRAGE.

PETITIONS TO HOUSE OF ASSEMBLY, LOWER CANADA, 4 DEC. 1828.[1]

Upper Town of Quebec Election-Petition of Electors.

A Petition of divers Electors of the Upper Town of *Quebec,* whose names are thereunto subscribed, was presented to the House by Mr. *Clouet,* and the same was received and read; setting forth: That in July One thousand eight hundred and twenty-seven, *William Fisher Scott* was appointed Returning Officer for the election of two Citizens to represent in Parliament the Upper Town of *Quebec,* and that on the seventh of August a Poll was opened for that purpose near the Bishop's Palace: That the Candidates were Messrs. *Joseph Remy Vallières de St. Réal, Andrew Stuart, George Vanfelson* and *Amable Berthelot:* That the Polling was continued to the fifteenth August, when Messrs. *Joseph Remy Vallières de St. Réal* and *Andrew Stuart* were returned as duly elected: That, however, on the fourteenth, Mrs. Widow *Laperrière* did tender to Mr. *Scott,* the aforesaid Returning Officer, her vote,

[1] *Journals of House of Assembly, Lower Canada, 1828-29, pp. 81-84.* The consideration of the petitions was carried over until the next session when a Report was presented declaring that the petitioners were unqualified, and the matter was dropped.

under oath, which Mr. *Scott* did refuse to take and enregister, whereupon a protest against such refusal was served. That the Petitioners allege that the following conclusions are to be drawn from this refusal: 1. That Mr. *Scott* acted contrary to law; 2. That the election of Mr. *Stuart* is void. That the Petitioners saw with extreme concern and alarm this refusal to take a vote tendered under oath, in the terms of the law; and they allege that Mr. *Scott* had no discretion to exercise, that he was bound to follow the letter of the law, that he was not to sit as a judge of the law. That the Petitioners need hardly avert to the danger of such a power as Mr. *Scott* has exercised. They will not place their dearest right, their elective franchise, in the hands of any one man, but especially they will not place it in the hands of an officer appointed by the Executive, and whose opinions and feelings under almost every circumstances must endanger the free choice of the people, and thus strike at the root of their liberties. That the Petitioners, therefore, deem this refusal to take a vote offered in the terms of the law, a most dangerous precedent, contrary to law, and tending to subvert their rights and constitutional privileges. That the Petitioners represent on the second head, that, as the votes of the Widows were not taken, the return of Mr. *Stuart* is void, inasmuch as the free choice of all the electors was not made known. That the Petitioners may presume to trouble the House with the reasons which they deem conclusive as to the right of Widows to vote; neither in men nor women can the right to vote be a natural right: it is given by enactment. The only questions are, whether women could exercise that right well and advantageously for the State, and whether they are entitled to it. That the Petitioners have not learned that there exist any imperfections in the minds of women which place them lower than men in intellectual power, or which would make it more dangerous to entrust them with the exercise of the elective franchise than with the exercise of the numerous other rights which the law has already given them. That, in point of fact, women duly qualified have hitherto been allowed to exercise the right in question. That the Petitioners conceive that women are fairly entitled to the right, if they can exercise it well. That property and not persons is the basis of representation in the English Government. That the qualifications required by the Election Laws sufficiently shew this. That the same principle is carried into our own constitution. That the paying certain taxes to the State is also a basis of representation; for it is a principal contended for by the best Statesmen of England, that there can be "no taxation without representation." That the duties to be performed to the State may also give a right to representation. That in respect of property, taxation and duties to the State, the Widow, duly qualified by our Election Laws, is in every essential respect similarly situated with the man: her property is taxed alike with that of the man: she certainly is not liable to Militia duties, nor is the man above forty-five: she is not called to serve on a jury, nor is a physician: she cannot be

elected to the Assembly, nor can a Judge or Minister of the Gospel. It may be alleged that nature has only fitted her for domestic life, yet the English Constitution allows a woman to sit on the Throne, and one of its brightest ornaments has been a woman. That it would be impolitic and tyrannical to circumscribe her efforts in society,– to say that she shall not have the strongest interest in the fate of her country, and the security of her common rights: It is she who breathes into man with eloquent tenderness his earliest lessons of religion and of morals; and shall it be said that his country shall be forgotten, or that she shall mould his feelings while smarting under hateful laws. That the Petitioners allege that Widows exercise, generally, all the rights of men, are liable to most of the same duties towards the State, and can execute them as well. And they pray from the premises: 1. That the House declare Mr. *Scott,* the Returning Officer, guilty of malversation in office, and take measures to enforce the law in such case provided. 2. That the proceedings at the late Election for the Upper Town of *Quebec,* concluded on the fifteenth August One thousand eight hundred and twenty-seven, by the Return of Mr. *Stuart,* be declared void. The Petitioners further represent, that the Return of Mr. *Stuart* was made after a contestation of seven days, when all the votes, with a few exceptions, had been polled, and the Return was made in consequence of the small majority of nine votes. That the Petitioners are satisfied in their own minds, that Mr. *Berthelot* had a considerable majority of legal votes. That the Petitioners would also represent, that extraordinary means of corruption by threats and actual dismission from employment, were used by the partizans of Mr. *Stuart,* both on the part of private individuals and on the part of Officers holding civil and military appointments; and they wish particularly to call the attention of the House to the fact, that it has come to their knowledge, that, in effect, owing to the interference of authorized overseers, the numerous class of voters labouring on His Majesty's works on the Cape, came forward under the impression that they risked their employment if they did not vote for Mr. *Stuart.* That the Petitioners also beg leave to state, that the Records of the King's Bench, *Quebec,* will shew the conviction of one person, for voting without a right, whom some public-spirited individuals got punished as an example: they did not choose to prosecute about thirty more, of whom they still retain a list taken during the election. That the Petitioners also represent that, in their opinion, a fatal irregularity in keeping the Poll-book was practised when the votes were taken in another Poll-book than that of the Returning Office, by a Clerk not duly sworn. That the Petitioners, in conclusion, pray that the House may act upon the premises as it may deem fitting, and do as to justice appertaineth, in a case which the Petitioners conceive affect their liberties and dearest rights.

Mr. *Clouet* moved to resolve, seconded by Mr. *Labrie,* That the grounds and reasons of complaint set forth in the said Petition, if true,

are sufficient to make void the election of the said *Andrew Stuart*, Esquire.

Ordered, That the consideration of the said motion be postponed till Tuesday next.

William Henry Election; Petition of Electors.

A petition of divers Electors of the Borough of *William Henry*, whose names are thereunto subscribed, was presented to the House by Mr. *Stuart*, and the same was received and read; setting forth: That on the twenty-fifth day of July in the year of our Lord One thousand eight hundred and twenty-seven, a Poll was legally opened by *Henry Crebassa*, Esquire, Returning Officer, for the Election of a Burgess to serve as the Representative of the said Borough of *William Henry*, in the Provincial Assembly; *James Stuart* and *Wolfred Nelson*, Esquires, having offered themselves as Candidates: That although the said *James Stuart* was afterwards elected by a majority of legal votes, yet an apparent and colourable majority in favour of the said *Wolfred Nelson*, to the exclusion of the said *James Stuart*, was obtained by the admission of unqualified persons to vote, by various corrupt, illegal, criminal and unwarrantable means and practices destructive of the right of Election in the persons legally qualified to be Electors, and subversive of the constitutional franchise, rights and privileges of the Petitioners and of the whole body of Electors: That the Petitioners, as well in consideration of the justice due to the person who has been the object of their choice, as from regard to their own rights which have been grossly violated, deem it to be their duty to resist and oppose the illegal Return of the said *Wolfred Nelson*, and having recourse to the House for their interference, pray leave succinctly to represent the principal facts and grounds on which the said Return is to be considered an undue Return, and as being null and void in law: That many votes were given in favour of the said *Wolfred Nelson*, by persons without any qualification whatever, and whose want of qualification was even apparent on their own statements; such persons having been induced to vote and even to take the oaths to entitle them to do so, by criminal solicitations, and by assurances pressed upon them, before the Returning Officer himself, that they would incur no harm from such conduct, and that they would be guaranteed and indemnified by the said *Wolfred Nelson* and his partisans against all consequences: That the votes of women, married, unmarried, and in a state of widowhood, were illegally received for the said *Wolfred Nelson*, although the illegality of such votes was strenuously urged by the said *James Stuart*, and notwithstanding the opposition made by him and by divers of the Electors to the admission of them: That in divers instances several persons were admitted to vote for the said *Wolfred Nelson* on one and the same alleged qualification; in others, persons under oath declared themselves proprietors of houses to which they had no right or title; in others, an arbitrary and untrue value, exceeding the real value, was assigned, even on oath, to property of which the value was not sufficient to confer a right of voting; and in almost all

these cases an undue and improper influence by promises, by violence, and otherwise, was exercised over such persons even at the Poll, and in the presence and hearing of the Returning Officer, to stifle their scruples, and prevail on them to give their votes for the said *Wolfred Nelson;* nay, even to induce them to commit perjury by taking the Oath of qualification: That during the whole course of the Election, a number of persons, not resident within the Borough, and having no right to vote at the said Election, were collected and kept together for the purpose of overawing and intimidating Electors desirous of voting for the said *James Stuart,* from following their inclination, and these persons, by surrounding the Hustings, and by clamour and violence, obstructed and prevented Electors from voting for the said *James Stuart,* and most effectually violated and destroyed all freedom of Election: That after the said Election, to wit, in a Session of Oyer and Terminer and General Gaol delivery, held at *Montreal,* in November One thousand eight hundred and twenty-seven, Indictments were found against seven persons; viz. *Antoine Aussaut, Nicholas Buckner, Joseph Claprood, Antoine Paul Hus* alias *Cournoyer, Louis Allard, Rosalie St. Michel,* and *Jean Baptiste Cantara,* for wilful and corrupt perjury, in having sworn falsely at the said Election to entitle themselves to vote for the said *Wolfred Nelson;* and an Indictment was also found at the said Court against *Louis Marcoux,* one of the most active partisans of the said *Wolfred Nelson* at the said Election, for subornation of perjury: That in the last Term of His Majesty's Court of King's Bench for the District of *Montreal,* one of the said Indictments which had been removed by Certiorari into that Court, namely, the Indictment found against the said *Joseph Claprood* was tried by a Common Jury, and the said *Joseph Claprood,* upon the clearest evidence, was found guilty of the offence therein charged against him; the rest of the said Indictments still continue pending and undetermined. Under such circumstances, evincing that the Return of the said *Wolfred Nelson* has been obtained by the most illegal and criminal means, the Petitioners cannot doubt that the House will feel an anxious desire to do justice upon this representation; and they therefore humbly pray the House to take the premises into its serious consideration; and in granting relief to the Petitioners, that the House will be pleased to order the Clerk of the Crown in Chancery to attend the Bar of the House to amend the Return for the said Borough, by erasing the name of the said *Wolfred Nelson* and inserting that of the said *James Stuart* in lieu thereof, and make such other and further Order in the premises as in the wisdom of the House shall appear fit.

Mr. *Stuart* moved to resolve, seconded by Mr. *Solicitor General,* That the grounds and reasons of complaint set forth in the said Petition, if true, are sufficient to make void the Election of the said *Wolfred Nelson,* Esquire.

Ordered, That the consideration of the said motion be postponed till Saturday next.

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